

# OHRC Today



Ontario Human Rights Commission | 2013-2014 Annual Report

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## Putting our best foot forward at Toronto's 2013 Pride Parade



OHRC staff, family and friends join the parade at Pride Toronto 2013.

Photo: Dug Claxton

## This year in HISTORY

In the nine years of Barbara Hall's leadership, the OHRC has had many legal and activity milestones that have helped human rights in Ontario to grow and evolve. Watch for examples throughout this report.



**Ontario Human Rights Commission**  
Commission ontarienne des droits de la personne

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Taking the "Canadian experience" message to the community at the Learning Enrichment Foundation (left to right): Peter Frampton, Executive Director, The Learning Enrichment Foundation (LEF); Rita Samson, OHRC; Fernando Rivas, Conductor of Client Engagement, LEF; Chief Commissioner Barbara Hall, OHRC; Timothy Maxwell, Business Relations Manager, LEF. For more details see page 18.



A message from Chief Commissioner Barbara Hall – see page 3.

# OHRC Commissioners



**Barbara Hall**, Chief Commissioner – Appointed November 2005

Barbara Hall has more than 40 years of experience as a community worker, lawyer and municipal politician. She served three terms as a Toronto city councillor from 1985 on and as Toronto's mayor from 1994 to 1997. From 1998 to 2002 she headed the Canadian government's National Strategy on Community Safety and Crime Prevention. She was appointed

Chief Commissioner of the Province of Ontario's Human Rights Commission in 2005.

Ms. Hall has practised criminal and family law, been a member of the Province of Ontario Health Ministry's Health Results Team, and lectured nationally and internationally on urban and social issues. She has extensive experience on non-profit boards and committees, and has a strong record of bringing diverse groups together to build safe and strong communities.



**Ruth Goba** – Toronto – Appointed October 2006

Ruth Goba is a lawyer who has worked both domestically and internationally on issues related to economic and social rights (ESR), with a particular focus on women's rights. Before joining the OHRC, Ruth worked for an international NGO in India on women's housing, land, property and inheritance rights and with the UN Special Rapporteur on the Right to Adequate Housing. Upon her return to Canada, she worked

with the Centre for Equality Rights in Accommodation (CERA), a human rights organization that advocates for housing and the elimination of poverty. From 2007 to 2009, she held the position of Executive Director at CERA.

Ruth also worked in private practice focusing primarily on issues of gender, disability and racial discrimination in education and employment. Ruth served on the board of the National Association of Women and the Law (NAWL) and was a member of LEAF's Legal Committee. She has also taught Disability Studies at Ryerson University.



**Raja Khouri** – Toronto – Appointed September 2006

Raja Khouri is president of the Canadian Arab Institute, a policy think tank he co-founded in 2011. Raja is co-founder of the Canadian Arab/Jewish Leadership Dialogue Group, and an international consultant in organizational development and capacity building.

Raja formerly served on several government and civil society bodies, such as Ontario's Hate Crimes Community Working Group (for the Attorney General and Minister of Community Safety and Correctional Services), the Minister of Education's Equity and Inclusive Education Strategy Roundtable, the Pride Toronto Community Advisory Panel, the Couchiching Institute on Public Affairs, and as advocacy co-chair of Human Rights Watch Canada. He served as president of the Canadian Arab Federation in the period following the events of 9/11.

Raja's earlier career included a senior management position at CIBC and management consulting tenures in Europe and the Middle East. He has designed and chaired conferences, given and moderated lectures, numerous media interviews, and published commentaries in journals and major Canadian dailies. He's the author of *Arabs in Canada Post 9/11*.



**Fernand Lalonde** – Gloucester – Appointed May 2005

Fernand Lalonde retired from the federal public service in 2001 after serving in many roles including General Secretary of the National Joint Council, Executive Director of Appeals and Investigations for the Public Service Commission of Canada, and Director, Human Resources, Parks Canada.

Mr. Lalonde is a former President of the Canadian Public Personnel Management Association, and is currently a consultant providing services in union-management relations, dispute/conflict resolution, workplace assessments, training and executive coaching.



**Julie Lee** – London – Appointed September 2009

Julie Lee is a lawyer, practicing family law in St. Thomas, Ontario. Julie clerked for the Honourable Mr. Justice Iacobucci at the Supreme Court of Canada in 1999 – 2000. Before her legal education, she worked in the anti-violence movement as an educator, administrator and advocate.

She is the co-founder of second stage housing in Huron County and the past executive director of the London Abused Women's Centre in London, Ontario. Julie's advocacy has also been directed at achieving equity and dignity for same-sex families.



**Larry McDermott** – Lanark – Appointed September 2009

A member of Shabot Obaadiwan First Nation, Larry McDermott served as an Ontario municipal politician for 28 years including as the first national rural chair of the Federation of Canadian Municipalities (FCM).

He is currently Executive Director of Plenty Canada, a non-profit organization devoted to environmental protection and healthy communities, and a member of the Sciences Sectoral Commission of the Canadian Commission for UNESCO.



**Errol Mendes** – Ottawa – Appointed September 2009

Professor Mendes is a lawyer, author and professor, and has been an advisor to corporations, governments, civil society groups and the United Nations. His teaching, research and consulting interests include public and private sector governance, conflict resolution, constitutional law, international law and human rights law and policy. He has authored or edited 11 leading texts in these areas. He has been

a Project Leader for conflict resolution, governance and justice projects in China, Thailand, Indonesia, Brazil, El Salvador and Sri Lanka.

Since 1979, Professor Mendes has taught at Law Faculties across the country, including the University of Alberta, Edmonton, the University of Western Ontario, London, Ontario and the University of Ottawa from 1992 to present. He recently completed a Visiting Fellowship at Harvard Law School.



**Mark Nagler** – Hamilton – Appointed September 2009

Mark Nagler, Professor Emeritus, taught sociology, race and ethnic relations, native studies and disability studies for 29 years at the University of Waterloo. A past president of ARCH Disability Law, he has served on many volunteer boards and has advised the federal and provincial governments on a variety of aspects related to disability issues.



**Fiona Sampson** – Toronto – Appointed September 2009

Fiona Sampson is the Executive Director of "the equality effect," a non-profit organization that uses human rights law to transform the lives of women and girls. Fiona has worked as counsel for the OHRC and as the Director of Litigation at the Women's Legal Education and Action Fund (LEAF).

Fiona has appeared as counsel before the Supreme Court of Canada on many occasions, representing women's NGOs in different equality rights cases. She has worked as a legal consultant with, amongst others, the Ontario Native Council on Justice, the DisAble Women's Network (DAWN) of Canada, Education Wife Assault, and the Ethiopian Muslim Relief and Development Association.

Fiona has published numerous articles on women's equality and disability rights, and has her Ph.D. in women's equality law from Osgoode Hall Law School, York University.



**Bhagat Taggar** – Scarborough – Appointed May 2005

Bhagat S Taggar has an excellent record of service to the profession of engineering, as an educator, to public service and to human rights. He is a chartered electrical engineer from England and a professional engineer in Ontario. As a senior engineer for the capital city of Zimbabwe (during the two years following independence), he earned praise from the Parliamentary Speaker for his advisory work to farming co-operatives.

Before coming to Canada in January 1983, Bhagat was an engineer in England and a City and County Councillor. He also served on various public service bodies in England. In Canada, he worked in highly specialized technical areas. Bhagat served as a college professor in Canada and as chair of the Electronics Advisory Committee for Centennial College. He was also the owner, founder and President of a private career college.

As an activist, The Toronto Star listed Bhagat among the "movers and shakers" of the Toronto community (Oct. 15, 1992). He has chaired and presided over many community organizations, such as Panorama India and the Canadian Council of South Asians. He is a recipient of the Queen's Golden Jubilee Medal for Service, and has served as the Chair of the Employment Insurance Board for Scarborough.

At the OHRC, Bhagat has played an active role in key issues such as mental health and addiction disabilities, removing the "Canadian experience" barrier from employment, and human rights governance.



**Maggie Wente** – Toronto – Appointed October 2006

Maggie Wente is a partner with Olthuis Kleer Townshend LLP, representing First Nations and First Nations-controlled organizations, corporations, and service providers across Canada. Maggie is the past President and current Vice-President of Aboriginal Legal Services of Toronto. Maggie is frequently asked to speak at conferences and to law students about Aboriginal legal issues. She is a mentor

to Aboriginal law students and participates often in career panels at the University of Toronto law school.



# A message from Chief Commissioner Barbara Hall

**Human rights in Ontario is always changing – and that's a good thing.**

"Silence never won rights. They are not handed down from above; they are forced by pressures from below."

Roger Baldwin, founder,  
American Civil Liberties Union

I'm not simply talking about the changes we have seen in the human rights system – though I think those have been good too. The new *Human Rights Code* in 2006 gave the Ontario Human Rights Commission the clear mandate and opportunity to focus on systemic issues – the big picture approach to breaking down barriers. More recently, the 50th anniversary of the *Code* and of the OHRC itself gave us an opportunity to bring people together to look past changes and accomplishments. Those discussions helped me appreciate the important contributions of people and communities who together have led change.

Those discussions – and my decade or so at the OHRC – have expanded my understanding of how new issues and new challenges continue to emerge as our experience as a society changes. They demand new solutions, new approaches and new players. Inevitably that means challenging the status quo. We are well aware of the barriers posed by people who say "we've always done it that way," or "we're more comfortable with people who look and talk and think like us."

It is also clear that some issues are tragically persistent. I think of the treatment of Indigenous Peoples in Ontario, the ongoing damage caused by anti-Black racism, especially for young Black men, and the continuing barriers for people with disabilities.

As you will read in this annual report, the past year has seen progress. The launch of our *Policy on preventing discrimination because of gender expression and gender identity* was celebrated by transgender people and their allies. Their long struggle to get explicit recognition in the *Human Rights Code* was accomplished through much "pressure from below" – and now we make those rights real. Our new *Policy on removing the "Canadian experience" barrier* is

benefiting newcomers who are qualified for jobs in Ontario but have been turned down simply because they got their work experience somewhere else. We also took part in important legal cases. One, for example, with a milestone settlement, will help ensure people in jail, who have mental health issues, get the support they need.

There is no shortage of important human rights issues to address – so how do we choose? We have just completed a review of criteria for deciding which human rights issues to pursue. We looked across Canada and internationally but heard almost everyone say – this is not an exact science. Sometimes the decision just comes down to asking, "Which project will have the biggest impact?"

Like other government agencies, we are asked to show how we measure success. That's a tough question for human rights issues. Sometimes the numbers capture it – the number of publications distributed, public education sessions held, webinar participants engaged, consultation surveys completed. But other things can be harder to measure – what is the impact of a new policy or a legal intervention? Have attitudes changed? The answers may not be clear for years.

We often hear one way we can help is by creating tools so people better understand their rights and their responsibilities. So this past year we revised and published a new edition of *Teaching human rights in Ontario* for use in schools. It adds the teaching tools of the moment – copious links to Internet resources including eLearning modules, webinars, documents and our own Living Rights series, available on YouTube. Living Rights lets individuals tell their stories of human rights challenges and victories and helps put a human face to Ontario's *Human Rights Code*.

A few years back, the OHRC established a new Vision Statement to meet our changed mandate. The vision we settled on is "an Ontario in which everyone is valued, treated with dignity and respect, and where human rights are nurtured by us all." I've reflected on that many times during this, my last year at the OHRC, and I am more convinced than ever that "nurturing" human rights is an

excellent way to describe the duty placed on all of us by the *Human Rights Code*.

I've had the pleasure and the privilege to work with a wide range of dedicated people in my time at the OHRC. I've spoken with primary school kids and their teachers, young adults, advocates, MPPs, municipal and community leaders, police officers, and not-so-ordinary folks from across the province. I've come away from some of those meetings elated at the achievements being made. I've also faced the reality of issues still unresolved, of damage still being done to people who are denied the opportunity to realize their human rights. I've tried to learn from each encounter.

My fellow Commissioners at the OHRC have brought much collective wisdom and insight to the tasks before us; I am grateful for their dedication and wise counsel, especially in

helping to set the direction for our initiatives.

The staff at the OHRC are, genuinely, world leaders in their areas of expertise. The legal work they have pursued, the policies they have written, the advice they have provided and the tools they have created have an impact in many areas of Canada and abroad. It has been a pleasure to work with them.

Human rights and social justice have been important to me for as long as I can remember. In a few months' time, I will step down from my post as Chief Commissioner, but my commitment to these causes will not end. I am proud to be counted among the many people in our province who work to nurture human rights. Please join me!



Barbara Hall  
Chief Commissioner



June 30, 2014

Speaker of the Legislative Assembly of Ontario  
Room 180  
Main Legislative Building  
Queen's Park  
Toronto, ON  
M7A 1A2

Dear Mr./Ms. Speaker:

Under Section 31.6 (2) of the *Ontario Human Rights Code*, the Ontario Human Rights Commission is required to submit a report on the Commission's activities for the previous fiscal period by June 30<sup>th</sup> of each year, to be tabled in the Legislature.

In this regard, I am pleased to provide you with the Commission's Annual Report of its activities from April 1, 2013 to March 31, 2014.

Yours sincerely,



Barbara Hall, B.A., LL.B., Ph.D (hon.)  
Chief Commissioner

## Special report: Human rights and racial profiling

### Decision shows racial profiling as a form of everyday racism, confirms test for discrimination

The OHRC intervened in *Peel Law Association v. Pieters*, where the Court of Appeal overruled a Divisional Court ruling, and held that the Divisional Court applied an overly strict test for discrimination. In its June 2013 decision, the Court of Appeal found that the HRTO was reasonable in concluding that the claimants were discriminated against because of race and colour.

The case involved the treatment of two Black lawyers by a librarian in the Peel Law Association lounge in May 2008. Only "lawyers, articling students and students of law" were

permitted in the lounge. The librarian approached them in an aggressive and challenging manner, and asked them to produce identification. No one else in the lounge was questioned and asked for identification. The HRTO found that the librarian falsely claimed that the reason she singled them out was because she knew everyone else in the lounge. There were two other people in the lounge who had never been there before and whom she did not know. One was not a lawyer.

The Court of Appeal confirmed the traditional three-part test for a *prima*

*facie* case, as argued by the OHRC. It rejected the test applied by the Divisional Court. The Court of Appeal found that to establish a *prima facie* case, a claimant must show:

- That he or she is a member of a group protected by the *Human Rights Code*
- That he or she was subject to adverse treatment, and
- That the protected characteristic was a factor in the adverse treatment.

The OHRC argued that racial stereotyping will usually be the result of subtle, unconscious beliefs, biases and

prejudices, and is not limited to the law enforcement context. The Court of Appeal accepted this as a "sociological fact."

The Court also reiterated the principle that there does not need to be direct evidence of discrimination – it will more often be proven by circumstantial evidence and inference.

The Court's decision shows that racial profiling is a form of everyday racism. Racial profiling is about more than just traffic stops by the police. It is a phenomenon that is widespread in our society, and has many faces.

### Taking stock of carding, community contacts

There has been much concern that the Toronto Police Service (TPS) practice of "carding" has a major impact on the African Canadian community, particularly young Black men, and could contravene the *Human Rights Code*. For the statistical story, see the Toronto Star's in-depth series on carding, by Jim Rankin and associates, available online at [www.thestar.ca](http://www.thestar.ca).

In 2013-14, the OHRC took steps, in concert with community groups, to eliminate practices that could lead to human rights violations. Here are some highlights...

**Community meetings:** We attended community meetings around Toronto with the Law Union of Ontario, the Human Rights Legal Support Centre, Action for Neighbourhood Change, Mount Dennis, and the York Youth Coalition. We provided public education on rights under the *Code*, the human rights system, carding and racial profiling. We continue to encourage affected community members to come forward and share their stories.

**March 2013:** We supported the decision of the Toronto Police Services Board (TPSB) to collect and analyze data on contact cards and the pattern of contact between the police and members of the community in general, including young people from certain racialized communities.

**June 2013:** We raised human rights concerns about carding at the TPSB, including:

- the gross over representation of African Canadians in the Toronto Police Service's contact card database
- how carding interactions are commonly seen as detentions or restraints of liberty
- how such stops may lead to unreasonable questioning, requests for identification, intimidation, searches and aggression.

We called for existing practices to be stopped until they could be completely and transparently assessed against the *Code* and the *Charter*.

**November 2013:** We again called on the TPS to stop carding until policies and procedures were fully developed and assessed against the *Code* and the *Charter*. We recognized several positive steps in the TPS's Police and Community Engagement Review (the PACER Report), including:

- creating a standing community advisory committee to assess and address racial profiling
- doing community surveys to evaluate and address issues relating to public trust and racial profiling
- monitoring officer performance trends and indicators that may relate to racial bias

- reporting publicly on "Community Safety Note" related procedures and practices.

However, we still had major concerns about the TPS stopping individuals, asking for and recording their personal information and circumstances without clear and lawful criteria.

**December 2013:** We joined the PACER standing community advisory committee as regular members, and began working with the community and the TPS to implement PACER Report recommendations.

**January 2014:** We wrote to the TPSB about the independent legal opinion on carding it asked criminal lawyer Frank Addario to prepare. We called for Mr. Addario to assess the practice against the *Charter* and the *Human Rights Code*, and to look at concerns that in most cases, TPS officers cited "general investigation" as their reason for asking for, recording and storing personal information. These kinds of stops may lead to unreasonable questioning, requests for identification, intimidation, searches and aggression. Also, people who are stopped may feel they are not free to leave, and may not be told that they are free to leave.

We also asked that Mr. Addario consider the gross over-representation of African Canadians being issued contact cards in all Toronto

neighbourhoods, including the patrol zones in which they live, and under the category of "general investigation."

And once again, we called for carding to be stopped until clear and lawful criteria were developed and assessed against the *Human Rights Code* and the *Charter*.

**April 2014:** We made a deputation to the TPSB on its new Draft Policy on Community Contacts, citing it as an important step in its efforts to monitor and oversee reforms to the current approach to Community Contacts (formerly known as carding). We acknowledged the value of surveys to gauge public satisfaction regarding street checks, and collecting data in a separate database to monitor for racial bias in street checks.

The policy addressed several important issues, but our human rights concerns remained. We again called for the practice of arbitrarily stopping individuals and recording and retaining their personal information and circumstances to be stopped. We saw no indication in the policy about how officer discretion would be constrained to avoid racial profiling, and called on the TPSB to clearly define terms such as "ensuring public safety," "meet and greets," "community inquiries" and contacts that are prohibited.

We also called for clear penalties for inappropriate contacts,



Real accountability requires penalties up to and including dismissal when officer behaviour is consistent with racial profiling.

The Board listened to concerns raised by the OHRC and other advocacy and community groups and came back with a revised Draft Policy for consideration on April 24. They set out a definition of "public safety" and disciplinary measures if the policy is breached.

However, a new clause seemed to bring us right back to where we started.

The clause said that "collecting intelligence relating directly to an identifiable, systemic criminal problem and pursuant to a Service or Division-approved initiative" was a valid public safety purpose justifying initiating or recording contacts. It suggested that just being in a high-crime neighbourhood was a good enough reason for someone to be stopped and their personal information recorded and kept on file.

The OHRC and community and advocacy groups, including the Law Union of Ontario, the Black Action Defense

Committee and Justice for Children and Youth, were united in calling for the clause to be deleted. We told the TPSB that the clause would continue to permit officers to arbitrarily stop people and record and retain their personal information – with the same disproportionate impact on African Canadians.

The TPSB listened. They deleted the clause and they added a provision requiring receipts.

The result is a policy that, if effectively implemented, should help limit

officer discretion, reduce racial profiling and increase community trust. Good implementation, including data collection, clear procedures with close monitoring and effective training, is key to making this work.

We are ready to assist the Board and look forward to continued work with the Service through the PACER Advisory Committee to implement the policy. We will also continue to work with affected communities to help eliminate racial profiling from the streets of Toronto.

## This year in HISTORY

### *Nassiah v. Peel (Regional Municipality) Services Board*

The Nassiah case was one of the first HRTO cases dealing with racial profiling. In February 2003, Peel Police were called to investigate a possible shoplifting allegation at a large department store in Mississauga. The HRTO found that Ms. Nassiah, a Black woman, was subjected to a more intensive, suspicious and prolonged investigation because of her race. In other words, she had been subjected to racial profiling.

She had been wrongly apprehended by store security on suspicion of stealing a low priced item despite her repeated and impassioned denials, and a Peel Police officer conducted a discriminatory investigation that included:

- stereotypically assuming that a Black suspect might not speak English
- assuming that the White security guard was telling the truth and that the Black suspect was not, without properly looking at all the evidence, including a videotape of the alleged theft, which exonerated her
- adopting an "assumption of guilt" approach to the investigation by immediately demanding that Ms. Nassiah produce the missing item
- unnecessarily arranging for a second body search after the first one had shown she did not have the allegedly stolen item
- continuing with the investigation, rather than releasing Ms. Nassiah, even after the second body search confirmed that she did not have the stolen item
- spending up to one hour pursuing an allegation of theft, in the face of fragile evidence, for an item worth less than \$10.

The HRTO also found that the police officer subjected Ms. Nassiah to verbal abuse, and threatened to take her to jail if she didn't produce the missing item. The police and store security ultimately released Ms. Nassiah after they concluded that they had made an error.

The HRTO stated that racial profiling is a form of racial discrimination, and that it is against the *Human Rights Code* for police to treat persons differently in any aspect of the police process because of their race, even if race is only one factor in the different treatment. The HRTO also noted the mounting evidence that this form of racial discrimination is not the result of isolated acts of individual "bad apples" but part of a systemic bias in many police forces.

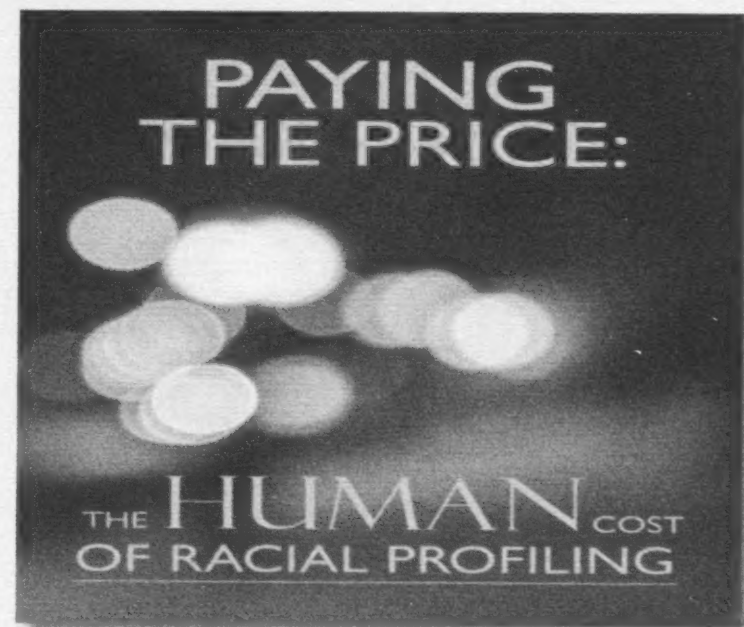
## This year in HISTORY

### *Saying no to racial profiling: Phipps v. Toronto Police Services Board*

In a decision in a complaint by Ron Phipps, who is Black, the HRTO ruled he had been subjected to racial profiling in 2005 by a Toronto Police officer. The officer stopped Phipps when he was delivering mail in an affluent Toronto neighbourhood, checked with a homeowner Phipps spoke to, trailed him and checked his identity with a White letter carrier. The OHRC intervened in this case.

In a 2010 decision, the HRTO said that although there was no overt racism, it did find that racial profiling had occurred. It said this incident served as an important reminder that racial profiling exists and is not acceptable in policing or security. It also confirmed that racial profiling can be a systemic act that people are not even aware they may be doing.

The OHRC's work on racism and racial profiling has been a driving force in its activities with police and corrections services across Ontario.



The OHRC first reported on racial profiling with its *Paying the Price* report in 2003.

## The organizational change page

# Reaching new milestones with the Human Rights Project Charter

The Human Rights Project Charter resulted from the settlement of a long-standing human rights complaint by Michael McKinnon against the Ministry of Community Safety and Correctional Services. That settlement also included our commitment to report on the project's process in the OHRC annual report.

Since August 2011, we have been working with the Ministry of Community Safety and Correctional Services (Correctional Services) and the Ministry of Government Services on a Human Rights Project Charter to bring about sustainable human rights organizational change in Correctional Services.

The main accomplishment of the Project Charter in the last year has been the development and approval by the parties of a strong Multi-Year Plan. The plan crystallizes the extensive work and recommendations of several committees that examined different aspects of human rights performance in Correctional Services.

In addition, an Aboriginal Advisory Subcommittee created an Aboriginal Strategic Plan for Correctional Services. The Strategic Plan is designed to improve the human rights of Correctional Services' Aboriginal employees and inmates/clients. It responds to the long-standing concerns that originally led to setting up the Human Rights Project Charter.

The Multi-Year Plan's initiatives, which reflect both the subcommittees' recommendations and the Aboriginal Strategic Plan, are spread out over two main implementation phases: a first phase lasting three years and a second phase lasting a further four years. Then, a third phase will focus on sustaining change. Before these phases start, two issues are being addressed: the need for permanent human rights, Aboriginal and change management expertise, and the need for a robust, fluid communication strategy to engage staff, promote accountability, and enhance understanding of human rights organizational change.

The initiatives reflect five main commitment areas:

1. **Embedding human rights and Aboriginal expertise in the Correctional Services** – An "Aboriginal lens" will be developed, making it easier to reflect and include Aboriginal Peoples' perspectives in all aspects of Correctional Services' work. Correctional Services will also work with the Ontario Public Service Employees Union to establish local committees to promote and discuss human rights and Aboriginal issues and solutions.
2. **Service delivery** – Operational policies and programs will be reviewed for human rights and Aboriginal impacts. Human rights will be incorporated into mental health-related initiatives. A client human rights and accommodation policy and processes will be developed. Finally, there will be improvements to mechanisms for dealing with inmates'/clients' human rights complaints.
3. **Building competencies** – Work in the first phase will focus on reviewing priority training programs to see where Aboriginal and human rights content should be introduced or improved, and developing a schedule for regularly reviewing programs. Later on, customized, job-specific, mandatory Aboriginal training modules and human rights training modules will be developed for each role in Correctional Services, including management. Correctional Services will improve how it reinforces on the job what employees have learned in human rights classroom training, and how it holds employees accountable for applying what they have learned.
4. **Inclusive workplace** – Correctional Services will review employment related policies and procedures to look for human rights barriers and opportunities, including for Aboriginal Peoples. Correctional Services will take steps to improve how they recruit and promote under-represented groups in the workforce, with a particular focus on Aboriginal Peoples. This will include improved outreach and representation goals, and an action plan to increase representation, including exploring special programs under Section 14 of the *Human Rights Code*. Recruitment data will be collected to assess where human rights barriers might exist, and to track progress on representation.

5. **Employee complaints** – Correctional Services will work with the Ministry of Government Services to:

- improve capacity to analyze workplace discrimination and harassment complaints for systemic issues
- address long-standing problems related to such complaints, including: bad faith complaints, reprisals for filing complaints, and a "code of silence" that can dissuade some employees from filing complaints or serving as witnesses.

Correctional Services will review its complaint related policies and practices, and will improve training and written guidance for managers on handling complaints.

While the Multi-Year Plan focuses primarily on the next seven years of implementation, the partners in the Project Charter understand that the goal of this project is to bring about long-term human rights organizational change. As a result, the parties are finalizing an agreement to extend their partnership, recognizing that much more work is needed to support sustainable long-term change. Also, a detailed evaluation plan is being developed to assess the impact of changes.

We are pleased to see that Correctional Services has already begun implementing important improvements. For example, when operational policies are developed or reviewed, it is becoming standard practice to seek and incorporate advice from staff with Aboriginal and human rights expertise. This is currently being done with policies related to transgender inmates. As well, a pilot project to collect Correctional Officer recruitment data is underway, to allow for study of possible human rights barriers.

Overall, the quality of the Multi-Year Plan and the commitment of Correctional Services' senior management to long-term human rights organizational change hold out much promise for significant steps forward over the coming years.



## Reviewing the outcomes of the Human Rights Project Charter

In February 2014, Ryerson University's Diversity Institute released its evaluation of the Human Rights Project Charter, a three-year joint project between the Toronto Police Services Board, the Toronto Police Service and the OHRC. The project, which ran from 2007 to 2010, involved applying a human rights lens to all facets of the organization, including employment, staffing and services to the public.

The review described the Project Charter as a revolutionary approach in policing that has led to important changes in processes, perceptions and behaviours. The reviewers made recommendations that will help guide both the Toronto Police Service and the OHRC as we do more work in human rights and policing. Examples are:

- improve diversity- and human rights-related internal and external data collection and analysis – we can't manage unless we can measure

- continue to strengthen human resource processes
- focus on behavioural change in training and on specific issues like racial profiling
- take a closer look at strategy and organizational sustainability
- make sure future change project plans build in evaluation and a strong logic model.

This was our first major work on organizational change to embed human rights into police operations and we did not achieve all of our goals. For example, during the process we did not agree on the need for human rights data collection. However, today, the TPS and TPSB are working to implement that same data collection – a change that flowed from the earlier project.

## Extending the Human Rights Project in Windsor

The Human Rights Project was launched in February 2011 as a joint initiative between the Windsor Police Service, Windsor Police Services Board, the Ontario Police College and the OHRC, to identify human rights issues in policing. It called for the Police Service and the Board to look at existing policies and programs, and to develop strategies to address human rights concerns, including recruitment, selection, promotion, and retention, as well as training, education, outreach and services.

The Windsor Police Service and the Windsor Police Services Board report that work on the Project is about 85% complete, and they are extending the project until August 2014 to complete work on outstanding initiatives.

The final report on the Project is slated for release in October 2014. It will update progress made towards bias-free policing services and fair and equitable employment opportunities for people who want to work with the police service.



February 2014: The OHRC staff team did its part to celebrate Pink Shirt Day in support of LGBT issues.

### This year in HISTORY

#### Fishing without fear: the Asian Canadian Angler Inquiry

In November 2007, the OHRC launched an inquiry following media reports and community concerns about a number of incidents across south and central Ontario in which Asian Canadian anglers were physically or verbally assaulted while fishing.

In this inquiry, launched in partnership with the Metro Toronto Chinese and Southeast Asian Legal Clinic (MTC/SALC), we received over 30 accounts from communities in the areas of Aurora and Richmond Hill, Ottawa, and Lake Huron. The majority of submissions came from three areas: Lake Simcoe, Peterborough, and the Rideau Locks, all popular areas for locals and tourists who enjoy water sports, including angling.

We issued a preliminary report and then a final report that included a series of commitments by police, municipal governments, school boards, government ministries, community groups and other stakeholders. These commitments were part of an action plan to work together for a focused response when racist incidents arise in communities. A year later, in 2009, we checked in with those organizations and reported back on whether the commitments they made had been put in place.

This inquiry became the model for the OHRC when partnering with organizations to resolve tension and conflict in Ontario communities.

#### Asian Canadian Angler Inquiry – a short history

- Spring and summer 2007: incidents first reported in the Chinese-language media
- September 2007: first article in the Toronto Star about incidents of assault in the Lake Simcoe region
- September 2007: Community Reference Group, on behalf of the Chinese Canadian and other Asian Canadian communities, holds a press conference, calling for the incidents to be treated as hate crimes
- October 2007: Peterborough Community and Race Relations Committee publicizes its concerns and forms a community-based coalition
- November 2007: OHRC launches inquiry in partnership with the Metro Toronto Chinese and Southeast Asian Legal Clinic and other community partners
- December 2007: OHRC releases its preliminary findings
- May 2008: OHRC releases its report, *Fishing without Fear*, outlining the commitments and actions of 22 organizations.

# Building solidarity with Aboriginal Peoples

## From Remembrance to Reconciliation

In November 2013, the OHRC co-hosted, with community organizations representing communities of colour, a day of dialogue to build solidarity with the Aboriginal community and promote truth and reconciliation. *"From Remembrance to Reconciliation – A Shared Community Dialogue on Our Roles as Treaty Peoples"* also marked the 250<sup>th</sup> anniversary of the *Royal Proclamation of 1763* and the 25<sup>th</sup> anniversary of the *Canadian Multiculturalism Act*.

The dialogue was organized by the Colour of Poverty/Colour of Change, Ontario Council of Agencies Serving Immigrants, the Metro Toronto Chinese & Southeast Asian Legal Clinic and the OHRC, and sponsored by York University's Osgoode Hall Law School. It featured keynote speaker Justice Murray Sinclair, Chief Commissioner of the Truth and Reconciliation Commission (TRC). As well, former Assembly of First Nations Chief Phil Fontaine and Chief Commissioner Barbara Hall, who are both Honorary Witnesses with the Truth and Reconciliation Commission, offered their insights. As well, speakers from the Aboriginal, African, Chinese Canadian and South Asian Canadian communities described historical wrongs and their communities' search for truth and reconciliation.

All participants were invited to sign a Statement of Commitment to Truth, Justice and Reconciliation, which called for:

- using the United Nations *Declaration on the Rights of Indigenous Peoples* as the framework for working towards ongoing reconciliation between Indigenous and non-Indigenous peoples
- reparations for historical wrongs that have yet to be acknowledged and/or redressed by the governments in Canada
- extending the mandate of the Truth and Reconciliation Commission.

"We are all Treaty peoples, and we share a collective responsibility to help bring about justice and equality for all. Reconciliation for Indigenous peoples and peoples of colour is an important first step towards that goal," said Debbie Douglas, Executive Director of Ontario Council of Agencies Serving Immigrants.



Talking about Truth and Reconciliation (left to right): Angela Robertson, Executive Director, Central Toronto Community Health Centres; Honourable Justice Murray Sinclair, Chair, Truth and Reconciliation Commission; Dr. Marie Wilson, Commissioner, Truth and Reconciliation Commission.



Asking questions at *From Remembrance to Reconciliation*.

## Promoting the rights of Aboriginal Peoples: Impact and Benefit Agreements

Impact and Benefit Agreements (IBAs) are becoming an industry standard for resource development projects located on or affecting Aboriginal Peoples' traditional lands and rights. The agreements often contain employment and contracting provisions that give priority for training, hiring and contracting to Aboriginal Peoples. However, some resource developers questioned whether these agreements contravened human rights legislation, and we heard concerns that the agreements were leading to unfair advantage for Aboriginal Peoples.

In March 2014, the OHRC released a statement supporting the legality of these provisions and confirming they can be considered "special programs" under the

Code, to address historical disadvantage and promote substantive equality for Aboriginal Peoples in Ontario.

Impact Benefit Agreements (IBAs) are negotiated private contracts between one or more Aboriginal governments and a resource extraction company. IBAs typically provide commitments and benefits by the resource extractor, which includes mitigating or eliminating negative impacts on Aboriginal rights, and employment, training and contracting benefits. Mining and resource development sectors are increasingly seeing IBAs as a way to share benefits with Aboriginal Peoples whose rights would be affected by the proposed resource development project.

## Writing to the UN Visiting Rapporteur on Indigenous Rights

The United Nations has recognized the important role human rights commissions can play in advancing the implementation of UN *Declaration on the Rights of Indigenous Peoples* at the country level. In September 2013, we wrote to James Anaya, the United Nations visiting Rapporteur on Indigenous Rights, and provided information about our increasing efforts to reach out to Indigenous communities, including our involvement with the Truth and Reconciliation Commission of Canada.

We also talked about our work as a member of the Canadian Association of Statutory Human Rights Agencies (CASHRA) calling on government to address the situation of missing and murdered Aboriginal women and girls. Together with other commissions, we are developing a document on promising practices in advancing the human rights of Aboriginal Peoples.



## Special report: gender identity and gender expression

# New policy protects human rights of trans and gender-diverse people

The OHRC launched an important new policy in Spring 2014, the *Policy on preventing discrimination because of gender identity and gender expression*. This policy followed the 2012 amendment to the *Human Rights Code* to add the grounds of gender identity and gender expression. This change provides protection for one of the most vulnerable and marginalized communities in society.

"It has been a long struggle to have these rights clearly protected in the *Code*," said OHRC Chief Commissioner Barbara Hall. "Adding these grounds makes it clear that trans people are entitled to the same legal protections as other groups under the *Code*. The challenge now is to send a message across Ontario that discriminating against or harassing people because of their gender identity or gender expression is against the law. This policy provides the tools to do this."



Getting ready to speak about gender identity and gender expression (left to right): Susan Gapka, Trans Lobby Group; Maya Teklu, Mount Sinai Hospital; Jeff Poirier, OHRC; Chief Commissioner Barbara Hall, OHRC; Andréa Roussel; Kenneth Jeffers, Toronto District School Board; Loralee Gillis, Rainbow Health Ontario; Rev Dr. Cheri DiNovo, M.P.P.

We consulted with several hundred members of the trans community, healthcare workers, housing providers, social service organizations and educators, and did extensive research to make sure the policy reflected today's lived reality for trans persons and people of diverse genders.

The policy looks at current issues around recognizing lived gender identity, changing identity on official documents, transitioning, dress codes and accessing facilities. It provides tools, practical scenarios and information that can be applied to everyday situations that trans people face in

housing, at work or when accessing services.

The policy offers organizations the tools to remove barriers and respect human rights. It also includes:

- clarifications of terminology
- information on key issues affecting the community

in employment, education, services and the justice system

- review of case law and clarity on rights and obligations
- guidelines on how to meet the needs of trans persons and people of diverse genders, including a best practices checklist.

We launched the policy at the 519 Church Street Community Centre in Toronto with more than 200 people attending. It was a powerful atmosphere as trans people and their allies celebrated their success, while acknowledging the work ahead to make new written rights real lived rights.

Future launches are planned for Sudbury and Ottawa in the fall. Major outreach initiatives will include training, printed and electronic publications, an eLearning module and webinar.



Listening to personal reflections about gender identity (left to right): Susan Gapka, Trans Lobby Group; Hon. Yasir Naqvi, Minister of Community Safety and Correctional Services; Rev Dr. Cheri DiNovo, M.P.P.; Chief Commissioner Barbara Hall, OHRC.



Delivering the gender identity/gender expression message in French: Pascale Demers, OHRC.

### This year in HISTORY

#### Taking trans rights to the courts *Michelle Hogan, Martine Stonehouse, A.B. and Andy McDonald v. Her Majesty the Queen in Right of Ontario as represented by the Minister of Health and Long-Term Care*

Before October 1, 1998, the provincial government provided public funding for sex reassignment surgery to persons who were approved for that surgery by the Gender Identity Clinic at what is now the Centre for Addiction and Mental Health (CAMH). The Clinic would grant its approval if satisfied that, among other things, the person had successfully completed a real-life test by living publicly in the desired gender role for two or more years.

Effective October 1, 1998, the government removed public funding for sex reassignment surgery for all persons who had not already received Clinic approvals for surgery. Four people who received Clinic approvals for sex reassignment surgery after October 1, 1998, challenged the government's decision to remove public funding. We argued that the decision to remove funding amounted to discrimination in services because of sex and/or disability.

In November 2006, an HRTO panel ruled that the government's removal of public funding for sex reassignment surgery was not itself discriminatory, but that it did discriminate against persons who had started medically-supervised transitions before October 1, 1998, and who received approvals for surgery from the Clinic within six years of having started their transitions. These persons should have received public funding for surgery, to allow them to complete the gender transitions they had begun at a time when public funding for surgery was still available.

The HRTO ruled that only three of the four people had been subjected to discrimination, and ordered the government to provide them with funding for surgery, and with general damages ranging from \$25,000 to \$35,000 per person.

### This year in HISTORY

#### Transit accessibility: calling all stops

In July 2007, in *Lopofsky v. Toronto Transit Commission (TTC)*, the HRTO found that the TTC's failure to ensure announcements of all stops on buses and streetcars violated the human rights of persons with disabilities, particularly riders with visual impairments. This decision showed that a policy of only announcing stops on request was not enough – the only way to ensure an accessible system was to call out all stops.

We took this message across Ontario, and asked all transit services to review their accessibility policies and practices and tell us what steps they were taking to make sure all transit stops were announced. After much discussion, and after making HRTO complaints against several services, calling out all stops is now the standard across the province – a standard that is also reflected in regulations under the *Accessibility for Ontarians with Disabilities Act*.

### This year in HISTORY

#### The XY decision: changing the landscape for gender identity

In April 2012, a significant decision from the HRTO in *XY v. Ministry of Government and Consumer Services* reinforced the human rights of transgender persons. The OHRC intervened in this case as part of its ongoing commitment to seek systemic solutions to eliminate discrimination based on gender identity.

The decision found that legislation requiring a person to have "transsexual surgery" before they can change the sex designation on their birth registration is discriminatory. It said that requiring surgery adds to the disadvantage and stigma experienced by members of this community, and reinforces the stereotype that transgender persons must have surgery to live in their felt gender. It ordered the Ontario Ministry of Government and Consumer Services (MGCS) to stop requiring transgender persons to have "transsexual surgery" to change the sex designation on their birth registrations, and to revise its criteria to reflect this.

In Fall 2012, MGCS adopted new criteria. In the new system, people need to provide a note from a practicing doctor or psychologist (including a psychological associate) stating that they have treated or evaluated the person and the change in designation is appropriate.

### This year in HISTORY

#### Moving forward with transit

In 2011, the OHRC reached settlements with the cities of Hamilton, Greater Sudbury and Thunder Bay in three transit-based cases at the Human Rights Tribunal of Ontario. We filed the complaints in 2009 to increase accessibility for riders with vision disabilities by ensuring the transit services called out all transit stops.

All three transit providers took action and now have automated call out systems that incorporate backup procedures should the systems malfunction. The transit providers monitor their systems regularly to make sure they are working properly, and provide training for all drivers. As part of the cities' commitment to accessible service, they have also helped transit riders learn about the stop announcement systems, and provided ways for riders to raise any concerns or get more information.

We also continued to follow up with both Variety Village and the Toronto Transit Commission about the Variety Village bus stop. This new stop made Variety Village, in Scarborough, more accessible for people with disabilities who rely on transit.



# Special report: Mental health disabilities and addictions

## Moving forward on mental health

*Minds That Matter: Report on the consultation on human rights, mental health and addictions* was released on September 13, 2012. This report outlined what we heard in our largest-ever policy consultation and set out 54 recommendations for government, housing providers, employers, service providers and other parties across Ontario. We also made 26 OHRC commitments to address human rights issues that affect people with mental health disabilities and addictions. In the past year, we have made important progress on meeting these commitments.

We are currently working on many mental health-related initiatives including legal cases, public interest inquiries, public education and outreach initiatives. We are putting the finishing touches on our first-ever *Policy on preventing discrimination because of mental health disabilities and addictions*. This new policy, along with guides for consumer/survivors and employers, will be launched in June 2014.

### Adding human rights in nursing requirements

The OHRC is being called as a witness by lawyers representing a nurse in a test case before the Fitness to Practice Committee of the College of Nurses of Ontario. The case involves a challenge to the constitutional validity of the definition of "incapacitated" under the *Health Professions Procedural Code*, a schedule to the *Regulated Health Professions Act*.

The case involves a nurse with a mental health disability who was subjected to incapacity proceedings at the College. As a result, she faces the prospect of having terms, conditions and limitations imposed on her ability to practice, and then having these conditions made public on the College's website, along with the stigmatizing finding that she is "incapacitated." The OHRC is being asked to testify on the human rights implications of negative stereotyping and stigma for people with mental health disabilities. The hearing is ongoing.

### OHRC testifies at Jardine-Douglas, Klibingaitis and Eligon inquest, calls for action

In February 2014, the OHRC called on the Government of Ontario, police services and others to implement Coroner's inquest recommendations into the deaths of Reyah Jardine-Douglas, Sylvia Klibingaitis, and Michael Eligon.

OHRC Chief Commissioner Barbara Hall told the inquest that human rights issues emerge when considering the use of force. Police services have an obligation to provide a service environment free of discrimination to people with actual and perceived mental health disabilities, including people who are racialized or are otherwise protected under the *Human Rights Code*.

Several of the jury's recommendations echo the OHRC's in its new report, "Police use of force and mental health" including the need to collect and analyze data, provide integrated, scenario-based training, and further study the use of conducted energy weapons (CEWs).

The OHRC report expands on key areas such as the use of CEWs and Mobile Crisis Intervention Teams (MCITs), and calls for immediate action on training, policy, data collection and reporting. It also recommends a review of the provincial use of force model.

The report formed the basis for submissions to the Independent Review of the Use of Lethal Force by the Toronto Police Service and the Office of the Independent Police Review Director's Systemic Review of the Toronto Police Service's Use of Force.

In her introduction to the report, Ms. Hall said, "We have already seen, and continue to see, many cases where people with mental illness have come into contact with police, sometimes with disastrous results. And we hear about these issues often from people and organizations in the community. The challenge will be to put recommendations into action – and the time to do that is now."

### Taking legal action

In *Lynwood Charlton Centre v. City of Hamilton*, the City refused Lynwood Charlton's request to move its housing for eight teenage girls with mental health issues. We intervened in a successful appeal of the decision at the Ontario Municipal Board. The OMB agreed with our arguments that the Centre's proposal aimed to remove land use barriers and improve accessibility to appropriate housing for persons with disabilities, which is consistent with the Provincial Policy Statement (PPS – a key statement from the Ministry of Municipal Affairs and Housing that directs municipalities on how to operate under the *Planning Act*) and other planning legislation.

The OMB also agreed that the PPS requirement that planning authorities permit and facilitate housing for special needs is a "powerful direction reflecting an important provincial policy interest."

The City did not appeal the decision and announced it will conduct "a comprehensive review of residential care facilities in the context of the Provincial Policy, as it relates to special needs, radial separation distances and the *Human Rights Code*."

### Public interest inquiries

We continue our work to eliminate discrimination in housing by working with municipalities. This has included looking at rental housing licensing and its potential discriminatory impact on Code-protected groups, and calling on municipalities to remove minimum separation distances for group homes.

### Landmark settlement addresses needs of inmates with mental health issues in Ontario prisons

We were part of a landmark settlement that focuses on the mental health needs of prison inmates. The September 2013 agreement followed an HIRTO application filed by Christina Jahn, a woman with mental illness, addictions and cancer. Ms. Jahn alleged that she was placed in segregation for 210 days at the Ottawa Carleton Detention Centre because of her mental health disabilities, and that the Ministry of Community Safety and Correctional Services discriminated against her by not accommodating her mental health-related needs.

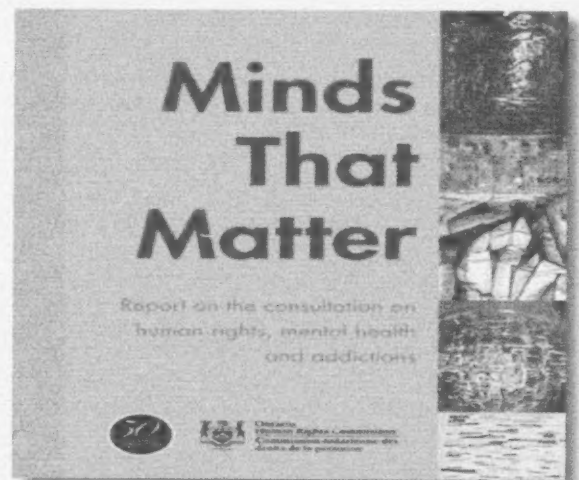
We intervened in Ms. Jahn's case to address systemic issues related to mental health services for inmates, as well as use of segregation for inmates with mental health issues.

As part of the settlement, the Ministry committed to change its policies and to only use solitary confinement or segregation as a last resort. It will review how to best serve women inmates with mental illness, set up mental health screening for all inmates, and make sure people who need treatment plans and mental health services have access to them. The Ministry will also train front-line staff and managers on mental health issues and human rights obligations.

### Taking a look at methadone

In *Minds that Matter*, we also heard about discriminatory attitudes and behaviours toward addiction treatment centres and services used by people with mental health disabilities and addictions.

*Continued on page 12*



*Minds That Matter*, released in September 2012, has served as a blueprint for OHRC activities in mental health disabilities and addictions.

Continued from page 11

Our research suggested that municipal regulation of methadone health services may create barriers for people with addictions who are trying to access those services. Methadone clients are a highly stigmatized group, and behaviours are often attributed to them based on stereotypes about addictions.

We have contacted several municipalities including London, Belleville, Northeastern Manitoulin and the Islands and Tillsonburg about regulatory bylaws that may have a discriminatory impact on people with addictions, and to stress the necessity of using a human rights lens when making planning decisions.

We will continue to closely monitor and research this issue.

### Public education and outreach

We expanded our public education and outreach activities across Ontario to raise awareness about the connection between human rights, mental health disabilities and addictions.

We led many public education events with a range of stakeholders, and took part in consultations, presentations and work with organizations of all sizes across Ontario.

## This year in HISTORY

### Reaffirming the rights of employees with mental illness

In August 2008, the Ontario Divisional Court upheld the finding of discrimination of the Human Rights Tribunal of Ontario in *Lane v. ADGA Group Consultants Inc.* After being hired as the most qualified candidate, Mr. Lane, a quality assurance analyst, was fired eight days into the job because he requested accommodation for his mental illness. The Court found that the employer had a dismissive attitude towards Mr. Lane and showed disregard for his bipolar condition. When he lost his job, Mr. Lane went into a state of full-blown mania which led to hospitalization for several days, and began a vicious cycle that led to marital breakdown, the loss of his family home, and further instability.

The HRTO held that management terminated Mr. Lane because of his disability and perceptions related to his disability, with virtually "no investigation as to the nature of his condition or possible accommodations within the workplace." The HRTO also found that ADGA had breached the procedural duty to accommodate, and this itself constituted a form of discrimination. It also rejected ADGA's argument that Mr. Lane had an obligation to disclose his disability during the hiring process.

Mr. Lane was awarded over \$75,000 in damages, and ADGA was ordered to establish a written anti-discrimination policy and retain a consultant to provide training to all employees, supervisors, and managers on the obligation of employers under the *Code*, with a focus on the accommodating persons with mental health issues.

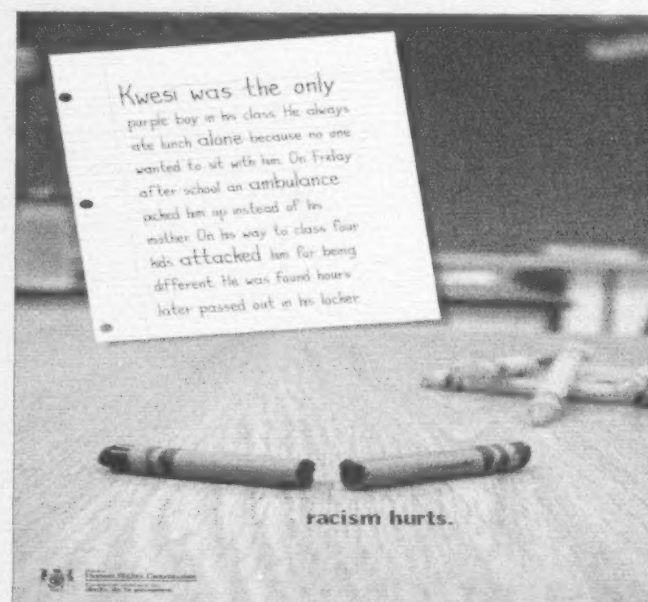
This decision clarifies what steps employers have to take to accommodate employees with mental illness. Steps include getting information relevant to the employee's ability to do the job, which may include medical condition, prognosis for recovery, job capabilities and ability to do alternate work.

## This year in HISTORY

### Sending the message that racism hurts

In 2008, students from kindergarten to grade 8 learned how "racism hurts" and what they could do to combat it, thanks to a unique initiative. The "racism hurts" campaign, a joint effort by the OHRC and the Elementary Teachers' Federation of Ontario (ETFO), includes a poster and curriculum materials to help teachers begin a discussion with students about human rights, discrimination and racism, and to get students to think about what they can do when they experience or observe racism in their school and in their community. Materials were distributed to more than 3,500 schools across Ontario.

The award-winning poster was designed as a result of the OHRC teaming up with students and faculty from Seneca College's Graphic Design Program in a course called Design for Social Change. ETFO members volunteered to develop lesson plans. The posters are still in use in schools today.



## This year in HISTORY

### Steps towards schools that work for all students

After filing a complaint against the Ministry of Education, we negotiated a settlement relating to its safe schools legislation, policies and practices. This April 2007 settlement arose because of a strong perception that the zero tolerance approach of the *Education Act* was having a disproportionate effect on racialized students and students with disabilities.

This led to amendments in the *Education Act* so that principals and boards consider mitigating factors before suspending or expelling students, the creation of a new provincial equity policy, and many other steps to embed a human rights focus in our schools. This settlement, along with similar steps with local school boards, have changed our relationship with the education sector, from adversary to partner – to the benefit of students, teachers and families across Ontario.



## New in housing

### Wrapping up inquiry on rental housing licensing in North Bay

In May 2013, the OHRC released a report on its inquiry into rental housing licensing in the City of North Bay. We began this inquiry in March/April 2012 with a survey of tenants, landlords and organizations dealing with rental housing. More than 185 people responded. We followed up with some respondents, attended a community meeting, and reviewed materials disclosed by the City and housing research from other sources.

The City made commitments to reinforce ground rules to respect human rights at community meetings, allow a reasonable time to accommodate tenants who may be displaced if rental housing is shut down, enforce the rental housing licensing bylaw with property owners not tenants, educate the public, and monitor the bylaw on an ongoing basis.

We heard concerns about the impact of bedroom caps (limits on the number of bedrooms that can be used in a rented house), gross floor area requirements and licensing fees. Based on the information provided to us, these elements in North Bay's bylaw did not appear to be discriminatory.

There was, however, one bylaw feature that may be discriminatory in some cases. The City grants exemptions to the bylaw if two or fewer people are paying rent for the household. This focuses on people, not buildings. We called for North Bay to remove this from the bylaw, because this rule can adversely affect students, single people, certain religious or ethnic groups and other Code-protected people who may not live in "traditional" family units.

"Rental housing licensing is a fairly new concept in Ontario," said OHRC Chief Commissioner Barbara Hall. "Our goal was to look closely at how licensing would affect families, students, seniors and vulnerable people who identify with grounds of Ontario's *Human Rights Code*. I thank City staff and the many North Bay residents who spoke with us about this bylaw. We found some promising practices that we'll share across Ontario, and we will continue to work with municipalities to make sure that there is room for everyone in our communities."

### Reporting back on Waterloo

Later in May 2013, we reported on our findings on rental housing licensing in the City of Waterloo. We did the same kind of survey (225 individuals and organizations responded) and follow-up work we did for the North Bay inquiry.

The City worked with the OHRC and improved the bylaw in many ways, adding references to human rights, applying the bylaw city-wide, educating landlords about human rights and agreeing to review the bylaw regularly. We consider these to be promising practices for other municipalities to consider, and have included them in *Room for everyone*, a guide on human rights and rental housing licensing.

When we wrote our report, we had two remaining areas of concern – per-person floor area requirements and minimum separation distances.

The bylaw's requirement of 7 square metres per person in bedrooms is far more

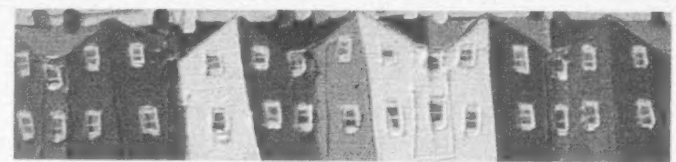
stringent than the requirements in the Building Code. This means that many bedrooms that meet provincial standards can't be rented to couples and other tenants who wish to share a bedroom – which restricts the housing options of many people who identify under the protected grounds of Ontario's *Human Rights Code*.

During the inquiry, we heard concerns about families who wanted their children to share a bedroom, and landlords said they were restricting their rentals to smaller family groups or households than they had in the past.

The second area of concern was the use of minimum separation distances (MSDs) that limit housing options for many vulnerable members of the community. Even though the licensing bylaw does not contain MSDs, they are in the City's zoning bylaw relating to lodging houses. By changing the definition of lodging houses,

the new system captures some "single housekeeping units" that were not affected by MSDs in the past. This has led to landlords closing bedrooms and renting to smaller households to get exempted from the more onerous rules for lodging houses.

In the months following our report, we continued to negotiate with the City and in February 2014, reached a Memorandum of Agreement with the City that helped to avoid a formal application to the Human Rights Tribunal of Ontario. The City agreed to look at its MSDs in its current review of its Zoning Bylaw, and to put exemptions in place to reduce the effect of per-person floor area requirements. As well, the City agreed to monitor the bylaw for human rights impacts. We will continue to work with Waterloo to ensure its zoning and licensing requirements reflect human rights requirements.



### Continuing to tackle Toronto zoning

For the past year, we continued our intervention in an HRTO case, where the Dream Team, a group of people living with mental health issues, and the Human Rights Legal Support Centre are challenging the City of Toronto's minimum separation distance requirements for group homes. We are concerned that both the old and the new bylaws fall short of both the Code and the City's own Housing Charter, because they:

- retain a requirement for minimum separation distances between group homes
- do not allow rooming houses in most parts of Toronto.

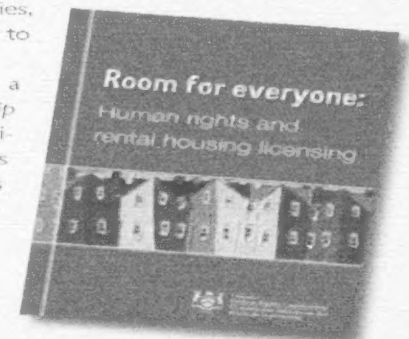
Dr. Sandeep K. Agrawal, the city's planning expert, looked at human rights issues the OHRC has raised from a planning perspective. His recommendations mirrored our position – that there is no sound planning rationale for minimum separation distances (MSDs) for group homes, and they should be removed.

The City issued a report to the Planning and Growth Management Committee in October 2013 recommending removing the MSDs. The Committee directed planning staff to do a larger public consultation and report back in April 2014. We will continue to work on this issue.

### New guide promotes room for everyone

Some of the promising steps North Bay and Waterloo are taking have been included in our guide, *Room for everyone: Human rights and rental housing licensing*. This guide is designed to help municipalities make the connection between housing licensing and human rights, and includes advice on steps that can advance human rights and steps to avoid. The guide was distributed to every Ontario municipality, planning schools, colleges and universities, housing advocates, and to housing organizations.

We also released a *Neighbourhood housing tip sheet*, which offers municipal politicians and planners ways to answer questions that arise from community opposition to affordable housing.



## Housing and human rights: Intervening in *Tanudjaja et al. v. The Attorney General of Canada et al*

Four people and the Centre for Equality Rights in Accommodation filed an application against the Attorney General of Canada and the Attorney General of Ontario in 2011. The application alleged that Canada and Ontario had violated their rights under sections 7 and 15 of the Canadian Charter of Rights and Freedoms by creating and maintaining conditions that lead to and sustain homelessness and inadequate housing.

The Attorneys General filed a motion to strike (a request that the court not

hear the case on its merits because it has no reasonable prospect of success) and were successful. The applicants appealed to the Court of Appeal, and the OHRC, along with seven other groups, sought leave to intervene in the appeal. We successfully argued that we could assist the court in its interpretation of section 15 of the Charter, with regard to intersecting grounds, contextual factors, and adverse effects leading to discrimination.

The case will be heard in May 2014.

### This year in HISTORY

#### Realizing rights in rental housing

In July 2008, the OHRC released *Right at Home: Report on the consultation on human rights and rental housing in Ontario*. We followed this up in October 2010 by launching our *Policy on human rights and rental housing*. This was the first extensive policy on human rights and housing in Canada.

Both the report and the policy were often met with scepticism, as municipalities, planners, housing providers and other groups were not used to considering human rights when making housing decisions. But through much hard work challenging "the way we have always done things," the OHRC and its partners have changed the housing landscape. Now, it is routine for a municipal politician to ask about human rights implications, or for planners to call us for advice when working on new bylaws and regulations, or for tenants to know that the *Human Rights Code* protects them in the place they call home.

## Making recommendations on provincial land use planning and appeals

In January 2014, we made a submission to the Ministry of Municipal Affairs and Housing Land Use Planning and Appeal System Review. We recommended that in communications with municipalities and regions, the Ministry should provide guidance on:

- the relationship between the *Human Rights Code*, the Provincial Policy Statement (PPS) and municipal planning and regulatory tools such as official plans and zoning and licensing bylaws
- when minimum separation distances are, and are not, appropriate, based on legitimate land-use rationales rather than "people-zoning"
- the implications of various legal decisions (including OMB decisions such as *Lynwood-Charlton v. Hamilton*)

with recommendations for municipal amendments to plans or bylaws

- how updating regional/municipal plans can increase inclusion, reduce discrimination, and help to avoid litigation.

We also recommended:

- advising municipalities of zoning limitations and planning practices that appear to be inconsistent with the *Human Rights Code* or legitimate planning rationales, recommending that municipalities end such practices, and setting out questions for municipalities in considering the issues.
- make sure that the planning system has the capacity to hear and address any human rights matter raised concerning official plans and bylaws
- actively seek input from affected tenants, their advocates, and the

organizations that serve them, to ensure they are included in planning processes

- advise municipalities to include human rights statements on public notices for statutory public meetings
- direct municipalities to:
  - ☆ communicate to their staff, decision-makers and the public that human rights will be respected in the planning process
  - ☆ consider how proposed changes or projects may affect people based on Code grounds
  - ☆ provide realistic framing of what community engagement is, and is not meant to do, including stating that community input does not include choosing who will or will not live in a neighbourhood.

## Co-owned housing – new options, new human rights issues

We wrote in March 2014 to the Township of Scugog, which was considering zoning bylaw changes that would effectively remove the option for multiple "tenant-in-common" housing. This form of co-owned housing may be important for certain groups, such as older Ontarians and persons with disabilities, regardless of their family and/or marital status.

Under the co-ownership model, a group of seniors (or other people with shared needs) buys into a house, and each co-owner becomes part of the household. The household jointly decides on hiring services such as maintenance, cleaning, attendant care, or anything else that will help the collective continue to live independently in the community.

After looking at the human rights concerns, the Township removed references to a new "communal dwellings" zoning category, and eliminated most of our human rights concerns.

## Working with municipalities, partners, planners on zoning, licensing

We worked with other municipalities on zoning and licensing issues, including:

### City of Guelph

- providing advice through its research and planning processes as it considers a rental housing licensing bylaw.

### City of Ajax

- reviewing and making a submission on the City's proposed Lodging House Licensing Bylaw and the associated Proposed Zoning Bylaw Amendment. We generally supported the City's consideration of human rights, but noted concerns about parking requirements, police record check requirements and potential zoning restrictions.

### Town of Greater Napanee

- we intervened at the HRTO in the case of a group home that was not being provided with the permit from the Town that it needed. In a settlement, the Town issued the required permit and agreed to consult with us and review its zoning bylaws to ensure they do not discriminate.

We have also contacted the Ontario Professional Planners Institute, to seek opportunities to integrate human rights into professional development and ongoing education for planners. And we are involved in preliminary discussions with a planning school to include human rights in the standard university planning curriculum.



## The creed files

### We're considering creed

When the Ontario *Human Rights Code* became law in 1962, creed was one of the original grounds of discrimination. At the time, there was significant overt discrimination against religious minorities. Since then, Canada's legal and societal approach to creed rights has evolved but it continues to be one of the most complex and controversial areas of rights law.

Creed rights tend to give rise to strong opinions, even among people who may not otherwise have much to say about human rights. Everything from what creed is (and what beliefs and practices are protected under the ground of creed), how creed claims are proven, how creed must be accommodated and what to do when creed bumps up against other rights have led to judicial interpretation and much public debate.

In this challenging environment, the OHRC has been following an intensive process to update our policy on creed. The consultation stage included an online survey that netted over 1,700 responses, focus groups, and discussions with faith leaders, diverse community members, academics, and human rights lawyers and practitioners.

In the Fall of 2013, we released *Human rights and creed: research and consultation report* which looks at the past and present social trends and dynamics that contribute to contemporary forms of discrimination based on creed. The report includes many insights that will guide us in developing the new policy.

The next step is to analyze what we have heard and launch a new policy on creed. This will be completed by Spring 2015.



### Bibles in schools: *R.C. v. District School Board of Niagara*

In an August 2013 decision, the Human Rights Tribunal of Ontario (HRTO) ruled that the *District School Board of Niagara's* policies for distributing religious literature in schools were discriminatory. The OHRC intervened in this case, where the applicants, who identify as atheist, believed the Board's original and amended policies were discriminatory. The original policy allowed only the Gideons to distribute religious literature to grade five students, with parental consent. The amended policy granted discretion to approve only the distribution of "religious publications" with parental consent.

The HRTO found that protection against discrimination based on creed extended to atheism, and said that prohibiting discrimination because of creed includes "ensuring that individuals do not experience discrimination in employment, services and the other social areas in the *Code* because one rejects one, many or all religions' beliefs and practices or believes there is no deity."

The HRTO ordered that unless the Board develops a new policy that complies with *Code* principles, it cannot distribute religious publications in its schools. The Board had six months to develop a new policy.

This decision makes it clear that *Code* protections against discrimination based on creed can cover persons who are not religious, including atheists. It also affirms *Code* values of diversity, equality and inclusion, recognizing a legitimate place for the expression of diverse religious ideas and practices within public schools and institutions.

#### This year in HISTORY

##### Multani v. Commission Scolaire Marguerite-Bourgeoys (Supreme Court of Canada)

Mr. Multani, a young Sikh student in Quebec, wished to wear his kirpan, a metal object resembling a dagger, worn as an expression of the Sikh faith. The school's board prohibited this. The Quebec Court of Appeal affirmed the board's decision.

Mr. Multani appealed to the Supreme Court of Canada, and we intervened because of our expertise arising from a similar 1991 case. As a result of our argument in that case, all schools in Ontario must accommodate this religious practice, provided the kirpan is worn with safety conditions. In the Multani case, we argued that the Ontario practice set out in the 1991 precedent should be applied across Canada.

In its unanimous 2006 decision, the Court struck down the Quebec Court of Appeal's decision, and found that Mr. Multani should be permitted to wear his kirpan to school provided it was in a sheath, was difficult to remove and was worn under his clothes. The Court held that the total ban on wearing of a kirpan violated the *Charter of Rights and Freedoms* and could not be justified as a reasonable limit prescribed by law.

#### This year in HISTORY

##### Creed, trial rights: *R. v. N.S.*

The OHRC intervened in a case involving a Muslim woman who was asking the Supreme Court of Canada to confirm her right to wear a niqab (face veil) while testifying against two family members accused of sexually assaulting her as a child. The case engaged competing religious and gender equality rights on the one hand, and the right to make full answer and defence in a criminal trial on the other. The OHRC urged the Court to adopt a clear process for reconciling rights based on earlier case law and the new OHRC policy.

In its December 2012 majority decision, the Court set out a framework to be applied on a case by case basis. Applying this framework involves answering four questions:

1. Would requiring the witness to remove the niqab while testifying interfere with her religious freedom?
2. Would permitting the witness to wear the niqab while testifying create a serious risk to trial fairness?
3. Is there a way to accommodate both rights and avoid the conflict between them?
4. If no accommodation is possible, do the salutary effects of requiring the witness to remove the niqab outweigh the deleterious effects of doing so?

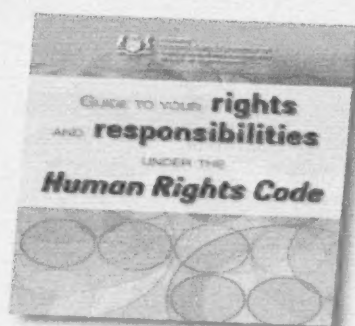
The Court's framework is consistent with the OHRC's *Policy on competing human rights*, which emphasizes the importance of considering competing rights on a case by-case basis and calls for:

1. Evaluating each set of apparently competing rights
2. Searching for measures to allow the enjoyment of each set of rights
3. If this is not possible, making a decision that considers the impact on each set of rights.

## New in books

### Guide offers plain talk about human rights

One of our ongoing challenges is to teach people about their human rights, and to help provide Ontarians the knowledge they need to stand up for their rights. Our new *Guide to your rights and responsibilities under the Human Rights Code* aims to meet this need. This plain-language booklet gives a basic overview and explains Parts I and II of the Ontario *Human Rights Code* and uses examples to show how the *Code* applies in different situations. Many of these examples are based on facts from real human rights claims.



### New teaching tool for the 21<sup>st</sup> century

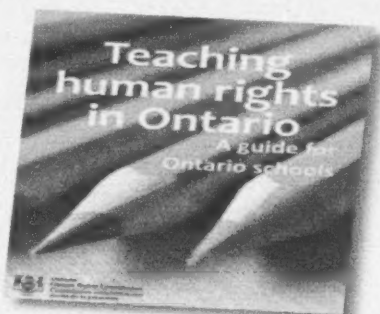
Over the past 20 years, there have been many changes in the requirements and the expectations of Ontario's education to both apply and teach human rights. A new edition of *Teaching human rights in Ontario* reflects these changes, and offers educators a new teaching tool for the 21<sup>st</sup> century.

"As our society becomes more diverse, the human rights challenges we face become more complex, and the need to bring a solid grounding in human rights becomes more critical. This guide can serve as a starting point for what I hope will be lifelong learning about human rights, and the value of respecting the dignity, worth and inclusion of all Ontarians," said Barbara Hall, Chief Commissioner.

*Teaching human rights in Ontario* can help teachers educate students on the concepts of equality, justice and fairness. It is also an education resource for law, history and civics courses, and cooperative education programs. The package includes information and activities to help students learn the difference between appropriate and inappropriate behaviours under the *Code*. Most situations used in this resource are based on real-life cases at the Human Rights Tribunal of Ontario and/or the courts.

*Teaching human rights in Ontario* links to the OHRC's *Living Rights Project*. This web-based virtual living library features interviews with human rights leaders and individual Ontarians who share their own personal experiences related to human rights. The guide offers links to human rights experiences from the past, and stories about current human rights issues. These stories are a resource to help advance human rights in the future and ensure that written rights under the *Code* become lived rights for everyone.

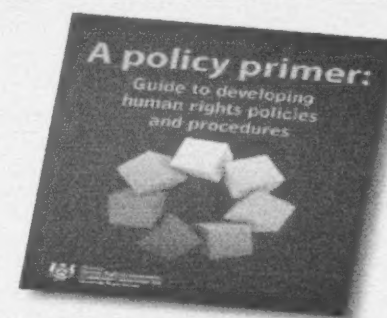
Since its release in December 2013, more than five thousand people have checked out the online version, and we have distributed thousands of printed versions to school boards, teachers' colleges, teachers' federations, directors of education and individual teachers across Ontario.



### Primer gives advice on policies

In December 2013, we launched an updated version of a guide to help organizations create their own human rights policies.

*A policy primer: Guide to developing human rights policies and procedures* gives organizations some practical help to develop effective and fair ways to prevent human rights infringements, and to respond to human rights issues such as harassment, discrimination and accommodation needs. The guide includes discussion of things to consider and provides sample language as a starting point for employers, landlords and service providers to write their own policies.

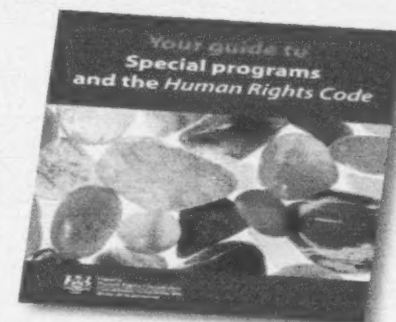


### Updated guide offers special programs tips

The OHRC encourages "special programs" as effective ways to achieve substantive equality by helping reduce discrimination, or addressing historical prejudice. Organizations do not need permission from the OHRC to develop a special program. This means that special programs can be put in place without delay.

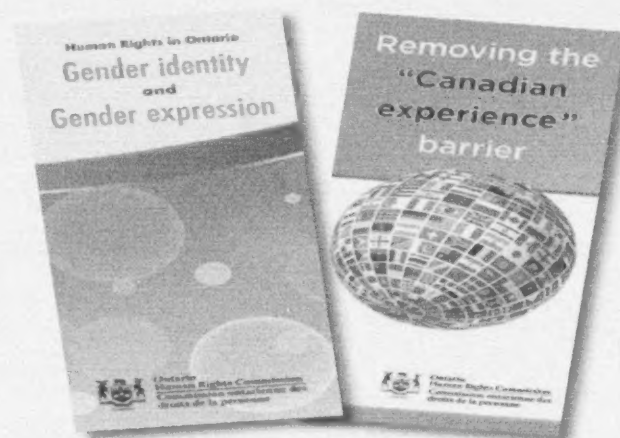
To help with this, we released an updated resource book, *Your guide to special programs and the Human Rights Code*, in December 2013. This guide describes the use of special programs, clarifies when they are allowed, and

provides practical information on how they can be designed.



## New releases

Check out the latest brochures on our website...



[www.ohrc.on.ca](http://www.ohrc.on.ca)



## Letters

When human rights issues are reported in the media, we see opportunities to comment and offer human rights insights to large audiences. Here are some highlights of our letters to the editor in 2013-14:

### **Trans myths based on intolerance, Toronto Star, Jan. 4**

- to dispel stereotypes and misconceptions about gender identity and gender expression.

### **Student housing can benefit a neighbourhood, Ottawa Citizen, Feb. 19**

- supporting an editorial on not applying different rules for students, and basing planning decisions on buildings, not people.

We also wrote many letters to municipal and provincial governments, to add a human rights voice to discussions of issues that affect all Ontarians. Highlights include:

### **Cabinet Committee on Poverty Reduction, October 2013**

- recommending that in the next Poverty Reduction Strategy, where possible, the government break down the eight indicators to show the impact of the Strategy on immigrants, women, single mothers, people with disabilities, Aboriginal Peoples and racialized groups who disproportionately experience poverty.

### **City of Oshawa, February 2014**

- on the right to breastfeed anywhere, and the legal requirement to accommodate breastfeeding in facilities, employment, housing and services to the point of undue hardship.

### **City of Toronto, February 2014**

- in November 2013, we provided input to the City of Toronto's consultation on Internet voting and accessible elections for voters with disabilities. We then wrote to Toronto City Council in February 2014 to support its consideration of implementing Internet and telephone voting for the 2014 municipal election.

## Legal in brief

### Clarifying the Code

Section 45.1 of the *Code* provides that the Human Rights Tribunal of Ontario (HRTTO) may dismiss an application, in whole or in part, if it is "of the opinion that another proceeding has appropriately dealt with the substance of the application." The challenge lies in deciding exactly when this applies. To help clarify the law, the OHRC intervened in two precedent-setting cases at the HRTTO.

#### **De Lottinville v. Ontario (Community Safety and Correctional Services), Claybourn v. Toronto Police Services Board et al., and Ferguson v. Toronto Police Services Board**

In these cases, each of the applicants had previously filed complaints about the conduct of police officers under the *Police Services Act* (PSA). The PSA was amended in 2009 to establish the Independent Police Review Director (IPRD) and a revised public complaints process. The HRTTO had to decide whether this complaints process was a proceeding that appropriately dealt with the human rights complaints.

The African Canadian Legal Clinic, the Metro Toronto Chinese & Southeast Asian Legal Clinic and the South Asian Legal Clinic of Ontario (the Coalition), the IPRD and the OHRC were granted leave to intervene in the Claybourn application.

We argued that the police complaints process is not a "proceeding" and does not appropriately deal with the substance of human rights applications, particularly in light of the different purposes of the complaints process (officer discipline) and Code (relief to victims of discrimination and removing discrimination).

The HRTTO agreed with our position, ruling that section 45.1 of the *Code* should not be applied to dismiss an application because the same underlying allegations of misconduct have been addressed though the public complaints process under the PSA.

The Ontario Provincial Police has filed a notice of application for judicial review of the HRTTO's decision.

#### **Maxwell v. Cooper-Standard Automotive Canada Limited**

This case involved a man who was injured on the job. He received Workplace Safety and Insurance Board benefits, but ultimately lost his job because the employer felt it had satisfied the return to work and labour-market re-entry referral provisions of the *Workplace Safety and Insurance Act*. Cooper-Standard argued that the case should not be heard by the HRTTO because it had already been dealt with through the WSIB process.

In an August 2013 interim decision, the HRTTO found that the WSIB process to determine whether the applicant was eligible for Work Transition was not a proceeding within the meaning of s. 45.1. It was not an adjudicative decision nor was there a process for the applicant to dispute the respondent's claim or appeal the referral for a Work Transition assessment. The process did not involve the application of an objective legal standard, did not give the applicant an opportunity to make submissions on the employer's position, and did not include a right of appeal.

The HRTTO also found that the WSIB had not appropriately dealt with the human rights issues.

### Blending seniority and human rights: *Lesperance v. Caressant Care Nursing and Retirement Homes Limited*

We intervened in a case where a part-time nursing home employee alleged that her employer and union discriminated against her by agreeing to collective agreement provisions that did not allow her to accumulate seniority during two disability-related leaves of absence.

In mediation, in October and December 2013, the respondents agreed to change their policies and collective agreements so that seniority would continue to accrue when people are on disability leave.

They also agreed to adjust the seniority of any other employees who had been affected by the discriminatory seniority provision.

The public interest remedies in this case will affect three nursing and retirement homes which together employ more than 140 part-time employees. The HRTTO's order incorporating the terms of settlement will also serve as a useful legal precedent to unions and employers negotiating seniority issues in future collective agreements.

### Changing the bus stop: *TB, MSB, and JBS v. Halton District School Board and Halton Student Transportation Services*

In August 2013, we intervened in this case where the board and transportation service did not agree to a mother's request to have her children's bus stop moved closer to her home because of her disabilities. Our goal was to help develop solutions that could be used by school boards across the province.

We took part in mediation with the parties, and helped them to reach a settlement. The board and transportation service

agreed to move the stop closer to the family home, to seek the OHRC's involvement in preparing and delivering training for its policy development and front-line staff on human rights accommodation and inclusivity, and to amend their transportation policies to accommodate parents with similar needs. The board and transportation service also agreed to recommend similar policy amendments to the Halton Catholic District School Board.

## The Canada page

# Calling on employers, regulatory bodies to remove the “Canadian experience” barrier



Working together to bring down the barriers (left to right): Hon. Jean Augustine, Ontario Fairness Commissioner; Claude Balthazard, Vice-President Regulatory Affairs, Human Resources Professionals Association (HRPA); Ratna Omidvar, President, Maytree; Debbie Douglas, Executive Director, Ontario Council of Agencies Serving Immigrants (OCASI); Chief Commissioner Barbara Hall, OHRC; Dr. Izumi Sakamoto, Principal Investigator, “Beyond Canadian Experience Project,” University of Toronto; Cherie Robertson, Senior Policy Analyst, OHRC; Elizabeth Reynolds, Manager, Diversity, Equity and Inclusion, KPMG; Errol Mendes, Commissioner, OHRC.



Ontario attracts highly skilled immigrants from all over the world. But if they have to meet a requirement for Canadian work experience, they are in a very difficult position – they can’t get a job without Canadian experience and they can’t get experience without a job. In almost every case, this is discrimination under the Code.

Many newcomers turn to unpaid work such as volunteering, internships or low-skilled “survival jobs” to meet requirements for Canadian experience. They

also face obstacles when trying to get professional accreditation since some regulatory bodies will not admit new members without prior work experience in Canada. As a result, they end up in jobs that do not correspond to their education, skills and experience.

That’s why we launched a new *Policy on removing the “Canadian experience” barrier* in July 2013, in partnership with KPMG. The new policy, along with a guide for employers and regulatory bodies, sets out the OHRC’s position that a strict requirement for “Canadian experience” is discriminatory, and can only be used in rare circumstances. Employers and regulatory bodies need to ask about all of a job applicant’s previous work – where they got their experience does not matter. The policy also shows employers and regulatory bodies how to develop practices, policies and programs that do not result in discrimination.

We took our “remove the barrier” message on the road, including launches in Ottawa and Thunder Bay, and a second Toronto launch with the Learning Enrichment Foundation. In partnership with the Maytree Foundation, we took part in a webinar on Canadian experience, and we continue to do presentations and training across Ontario.

In Spring 2014, we conducted our own webinar on the *Policy on removing the “Canadian experience” barrier*, with a French version to follow in July 2014.



Comparing notes on Canadian experience barriers at the Ottawa launch (left to right): Dick Stewart, Chair, Ottawa Local Immigration Partnership (OLIP); Fernand Lalonde, Commissioner, OHRC; Bhagat Taggar, Commissioner, OHRC.



## Joining forces with municipalities across Canada

Since 2005, the OHRC has partnered with UNESCO (the United Nations Educational, Scientific and Cultural Organization) to build a coalition of municipalities that share a commitment to human rights. The Canadian Coalition of Municipalities Against Racism and Discrimination (CCMARD) now includes over 50 municipalities, with 20 from Ontario.

Each municipality has made a series of commitments to share their experiences and the lessons they have learned, and to strengthen their policies and operations to counter all forms of discrimination.

To help spread the human rights message through CCMARD, we partner with municipalities to present one-day training events called "Taking it Local." In September 2013, Thunder Bay welcomed this travelling training session. The day featured two plenary sessions:

- A shared responsibility – human rights and Aboriginal Peoples (panel discussion)
- Focus on disability – the Code and the AODA.

Taking it Local – Thunder Bay also featured six concurrent sessions:

- *In the zone: housing, human rights and municipal planning*
- Bias-free hiring practices: removing the "Canadian experience" barrier in employment
- Disabilities and the duty to accommodate
- Organizational approaches to prevent discrimination against Aboriginal Peoples
- Gender identity and gender expression, sexual and gender-based harassment: what's new under the Code
- *Room for everyone: Human rights and rental housing licensing.*

Plans are underway for the next edition of Taking it Local – coming soon to a municipality near you.



*Taking it Local, Thunder Bay*

## Disability issues: working with CASHRA

Over the past year, we continued to collaborate across jurisdictions with fellow CASHRA members and organizations representing persons with disabilities, to look more closely

at how Canada is meeting its obligations under the United Nations *Convention on the Rights of Persons with Disabilities*.

## Expanding employment protections: *McCormick v. Fasken Martineau Dumoulin LLP*

We intervened in an appeal heard by the Supreme Court of Canada in December 2013. The case deals with the scope of the social area of employment and whether the protection of the British Columbia *Human Rights Code* extends to people who work in partnership arrangements. We argued for a broad interpretation of the social area of "employment" that covers the various ways that people carry out their work.

## Focusing on family status: *CN v. Seeley*

In this case, a mother complained under the *Canadian Human Rights Act* that the work rules of her employer conflicted with her child care responsibilities, and that her employer had failed to accommodate her needs related to those obligations. The Canadian Human Rights Tribunal rejected the more restrictive of the two tests for *prima facie* discrimination in family status cases found in the case law, held that discrimination had occurred, and awarded damages. The respondent sought judicial review in the Federal Court, and we were granted leave to intervene. The Court upheld the Tribunal's decision.

CN appealed, and we were again granted intervenor status. In March 2013, we made submissions to the Court.

### This year in HISTORY

**Council of Canadians with Disabilities v. Via Rail Canada Inc., Canadian Transportation Agency, Canadian Human Rights Commission, Ontario Human Rights Commission, Commission des droits de la personne et des droits de la jeunesse, Manitoba Human Rights Commission, Saskatchewan Human Rights Commission, Transportation Action Now, Alliance for Equality of Blind Canadians, Canadian Association for Community Living, Canadian Hard of Hearing Association, Canadian Association of Independent Living Centres and Disabled Women's Network Canada (Supreme Court of Canada)**

In this case, VIA Rail had bought railway cars from Britain that were not wheelchair accessible. VIA did a major retrofit of the cars, but still did not address all of the barriers to access in their design. We intervened in an appeal to the Supreme Court of Canada based on our *Policy and guidelines on disability and the duty to accommodate*. The Court supported our position in several key areas, including:

- having accessible trains travelling along only some routes does not justify inaccessible trains on others
- there is a higher obligation on service providers to not create new barriers when initiating a new structure or service.

The Court upheld that original decision of the National Transportation Agency ordering VIA to properly retrofit all of the railway cars, instead of its original intention to just have one accessible car per train.

## This year in HISTORY

### Living Rights Project adds a human face to human rights

In February 2012, the OHRC launched the Living Rights Project, a web-based living library that puts real people into the human rights discussion. The project was created to celebrate the 50th anniversary of Ontario's *Human Rights Code*, and to be an ongoing resource for all Ontarians. Several schools, including Parkdale and Cedarbrae Collegiates in Toronto, were involved as program partners.

The OHRC invites all Ontario residents to submit short videos, essays, letters, poems, songs, or any other artistic work that tells a human rights story. Submissions can talk about what "Human rights in Ontario" means, or tell a personal story related to the grounds of the *Code*, such as age, colour, disability, sexual orientation, etc. Stories can be positive or negative – the project's goal is to teach people about experiences over the past 50 years, as well as to look forward as the next generations learn about and advance human rights.

Ontarians of all ages and backgrounds are invited to add items to the virtual library. Full details are available on the OHRC website at [www.ohrc.on.ca](http://www.ohrc.on.ca).



## Check out these Living Rights videos!

- ★ Being trans can be deadly – Susan Gapka
- ★ Building an inclusive church – Cheri DiNovo
- ★ Remembering Toby Dancer – Cheri DiNovo
- ★ Don't discriminate by Parkdale C.I. students
- ★ Raise hell without breaking the law – Alan Borovoy
- ★ Aboriginal issues in 1965 – you've got to come to Kenora – Alan Borovoy
- ★ Assaulting Asian Canadian anglers – Susan Eng
- ★ Canadian experience – rejection is personal – Ratna Omidvar
- ★ Female, Chinese, challenging police – Susan Eng
- ★ First black woman in parliament – Jean Augustine
- ★ My father was a Holocaust survivor – Wendy Cukier
- ★ Racial profiling a fact of life – Dolorean Klien
- ★ Bridging between worlds is vital, profound – Susan Ursel
- ★ Don't intrude on someone's disability – David Baker
- ★ Mental illness and housing – John Fraser
- ★ Serial sexual harassment – Wendy Cukier
- ★ It's not easy to be gay and Asian – Andre Goh
- ★ The first legalized gay marriage – Cheri DiNovo
- ★ When housing was within her grasp – John Fraser
- ★ There's a business case for human rights – Wendy Cukier
- ★ No room for your coloured maid – Alan Borovoy
- ★ Racism today is more subtle – Jean Augustine
- ★ You want too much – Zanana Akande

[www.ohrc.on.ca/en/learning/living\\_rights](http://www.ohrc.on.ca/en/learning/living_rights)



## This year in HISTORY

### Anti-racism, Anti-discrimination for Municipalities

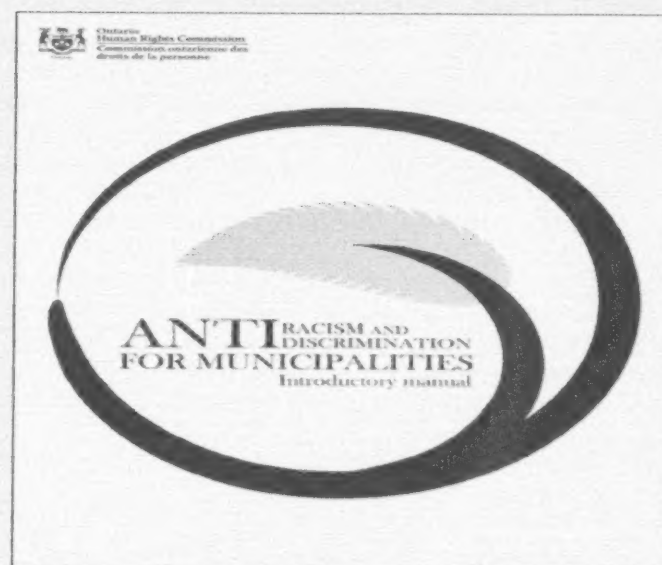
In June 2010, we launched a new reference guide, *Anti-racism, Anti-discrimination for Municipalities*, which offers tips and templates municipalities can apply to support human rights in communities of all sizes.

The guide includes some of the best ideas from across Canada. For example, it talks about how Saskatoon's Race Relations Committee reviews city policies, practices, and programs to recommend changes or action relating to personnel, policing, leisure services, housing and community services, education and training, use of municipal facilities, and planning and zoning.

It also talks about how the City of Toronto distributes posters on hate, equity and respect for diversity. This campaign is educating the public and showing support for racialized communities.

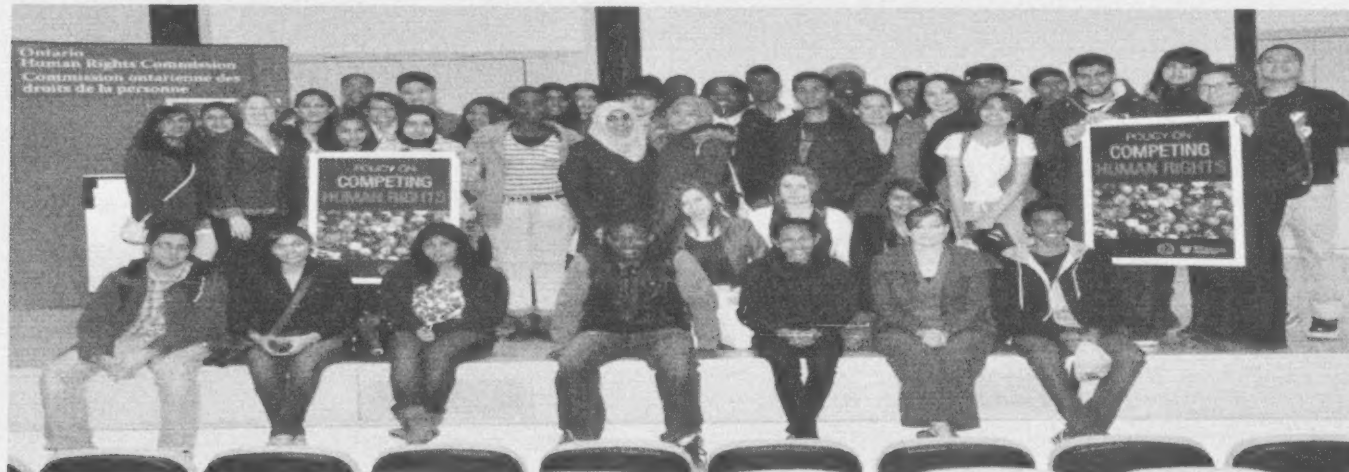
Many smaller communities may not have resources that are dedicated to doing this kind of work. The guide is geared to those municipalities, and offers many approaches they can take that are within their means.

*Anti-racism, Anti-discrimination for Municipalities* represents the input and ideas of many players across Ontario and in some cases across Canada. We extend a special thank-you to our partners at the Canadian Race Relations Foundation, York University and the City of Vaughan for their support.





## This year in HISTORY



2012: Grade 11 Co-op Program students from Cedarbrae Collegiate Institute take part in the launch of the OHRC's *Policy on competing human rights*. This policy outlines a series of steps that various sectors, organizations and individuals can take to deal with everyday situations of competing rights and avoid legal action. The policy may also give guidance to the Human Rights Tribunal of Ontario and the courts for addressing cases where litigation cannot be avoided.

# Following the Code – one card at a time

In 2013, we created new versions of the "Code card." Many organizations use these posters to tell employees, customers and partners that they respect and support human rights. Decisions from the Human Rights Tribunal

of Ontario often include orders to post these cards in workplaces, service locations, housing and other areas. Code cards are available in a variety of colour formats, and can be downloaded at [www.ohrc.on.ca](http://www.ohrc.on.ca).

## We observe and uphold Ontario's Human Rights Code

Our organization respects and follows the letter and spirit of the Ontario Human Rights Code.

We support and protect the dignity and worth of everyone. We provide equal rights and opportunities for all employees, clients and volunteers. Our policies, programs and processes are designed to address, prevent and eliminate discrimination in all aspects of employment and when we provide services to others. We do not tolerate harassment or unwelcome comments and actions. We take prompt action if such problems occur.

These are the prohibited grounds of discrimination under the Code:

- race, ancestry, place of origin, ethnic origin, citizenship, sexual orientation, sex, gender identity, gender expression, disability, colour, creed, age (18 and over, 16 and over in housing), marital status, family status, reprisal, receipt of public assistance (in housing), record of offences (in employment) and discrimination because of association.

The Code requires equal treatment in employment, housing, contracts, goods, services and facilities, and membership in vocational associations and trade unions.

The Ontario Human Rights Commission works to promote, protect and advance human rights. Its main focus is the root causes of discrimination. The right to work, education, participation in society and the right to be free from discrimination are its main concerns. Contact the Centre for Human Rights Education and Advocacy for more information about human rights education and to get a copy of the Human Rights Code.

The Human Rights Legal Support Centre provides free legal advice to people who need help with discrimination. Contact the Centre for Human Rights Education and Advocacy for more information about the Centre and to get a copy of the Human Rights Code.

The Human Rights Tribunal of Ontario deals with claims of discrimination filed under the Ontario Human Rights Code. The Tribunal receives applications through mediation or arbitration. The Tribunal's goal is to resolve claims in a fair, open and timely manner. Contact the Tribunal for more information about the Tribunal's procedures.

For related enquiries, please direct to the Registrar, Human Rights Tribunal of Ontario, 5th Floor, 1811 Bay Street, Toronto, ON M5A 3A3. Phone: 416-326-1219 (Toll-free: 1-866-968-0322) TTY: 416-326-1227 TTY toll-free: 1-866-968-0322 Fax: 416-326-1219 T1ax toll-free: 1-866-968-0322 Email: [info@hrto.on.ca](mailto:info@hrto.on.ca)



**Ontario Human Rights Commission**  
Commission ontarienne des droits de la personne

## Nous observons et appliquons le Code des droits de la personne de l'Ontario

Notre organisme respecte et suit les dispositions et l'esprit du Code des droits de la personne de l'Ontario.

Nous soutenons et protégeons la dignité et la valeur de tous. Nous assurons l'égalité des droits et des chances pour tous les employés, clients et bénévoles.

Nos politiques, programmes et procédures sont conçus pour prévenir et éliminer la discrimination dans tous les aspects de l'emploi et dans la prestation de nos services. Nous ne tolérons pas le harcèlement ou les commentaires et comportements importuns. Nous intervenons rapidement si des problèmes de ce genre surgissent.

Certains motifs de discrimination sont interdits par le Code :

- la race, l'ascendance, le lieu d'origine, l'origine ethnique, la citoyenneté, l'orientation sexuelle, le sexe, l'identité sexuelle, l'expression de la diversité, un handicap, la couleur, la croyance, l'âge (18 ans et plus, 16 ans et plus dans le domaine du logement), l'état matrimonial, l'état familial, les représailles, l'état d'assuré social (dans le domaine du logement), l'existence d'un lien juridique (dans le domaine de l'emploi) et la discrimination à cause d'une association.

Le Code exige un traitement égal dans les domaines de l'emploi, du logement, des contrats, des biens, des services et des installations, et de l'adhésion à des associations professionnelles et à des syndicats.

La Commission ontarienne des droits de la personne a pour mandat de promouvoir et de protéger les droits de la personne. Son principal objectif est d'éliminer la discrimination. Ses principales préoccupations sont les causes profondes de la discrimination. Ses domaines d'intérêt principal sont le travail, l'éducation, la participation à la société et le droit de ne pas être discriminé. Contactez le Centre pour l'éducation et l'advocacy des droits de la personne pour plus d'informations sur les droits de la personne et pour obtenir une copie du Code des droits de la personne.

Le Centre d'appui juridique en matière de droits de la personne offre des services juridiques gratuits aux personnes qui ont subi de la discrimination. Contactez le Centre pour l'éducation et l'advocacy des droits de la personne pour plus d'informations sur le Centre et pour obtenir une copie du Code des droits de la personne.

Le Tribunal des droits de la personne de l'Ontario traite les réclamations de discrimination déposées en vertu du Code des droits de la personne. Le Tribunal reçoit les applications par médiation ou par arbitrage. L'objectif du Tribunal est de résoudre les réclamations de manière équitable, ouverte et rapide. Contactez le Tribunal pour plus d'informations sur ses procédures.

Les demandes liées à la discrimination doivent être adressées au registraire, Tribunal des droits de la personne, 5<sup>e</sup> étage, 1811 Bay Street, Toronto, ON M5A 3A3. Téléphone : 416-326-1219 (sans frais : 1-866-968-0322) TTY : 416-326-1227 TTY sans frais : 1-866-968-0322 Fax : 416-326-1219 T1ax sans frais : 1-866-968-0322 Courriel : [info@hrto.on.ca](mailto:info@hrto.on.ca)



**Ontario Human Rights Commission**  
Commission ontarienne des droits de la personne

## Facts and figures

### Reaching out – adding the personal touch

Many human rights advances start with the personal touch – with a conversation. In 2013-14, we met with and spoke with groups across Ontario. Whether it was a speech, talking on a panel, presenting a training seminar or hosting an event, we worked hard to send the message that the OHRC is a partner and resource for all Ontarians.

Chief Commissioner Barbara Hall met with groups or made presentations at over 45 events. Highlights included:

- Centre for Independent Living Toronto, UN Convention on the Rights of Persons with Disabilities, Toronto
- Truth and Reconciliation Commission, Honorary Witness Talking Circle, Vancouver
- Canadian Commission for UNESCO, "Social inclusion, innovation and transformations for sustainable societies," Ottawa
- Windsor Police Services Board, "Update on our work with Windsor Police," Windsor
- Canadian Mental Health Association – Brant County, "Human rights and mental health," Brantford
- Kingston Community Legal Clinic, "Canadian experience and other OHRC policies," Kingston
- Ontario Public Supervisory Officers' Association, "Inclusive education and teaching human rights," Toronto
- National Ethnic Press and Media Council of Canada, "The role of the ethnic press in human rights," Markham
- Taking it Local training day, City of Thunder Bay
- Urban Alliance on Race Relations, "Human rights and race issues," Toronto

As well, OHRC staff made a variety of presentations and delivered training on a wide range of human rights issues. Here are some highlights:

- Simcoe County District School Board, "Disability, accommodation and inclusive design," Midhurst
- Queen's University School of Policy Studies, "Human rights organizational design," Kingston
- Human Resources Professionals Association, "Competing human rights," Toronto
- KEYS Job Centre d'emploi, "Policy on removing the 'Canadian experience' barrier," Kingston
- City of Thunder Bay, "Introducing the Policy on removing the 'Canadian experience' barrier"
- AODA Standards Advisory Council, "The Code, duty to accommodate and the AODA," Toronto
- Ontario Non-Profit Housing Association, "Trans inclusion," Toronto
- York University, Osgoode Hall Law School, "Competing human rights," Toronto
- Ontario Council of Agencies Serving Immigrants – Ottawa Region, "Canadian experience barriers," Ottawa
- Halton Student Transportation, "The duty to accommodate," Burlington
- Couchiching First Nation, "Human rights in employment and services," Fort Frances
- Ecclesiastical Province of Ontario of the Anglican Church of Canada, "Creed and religious employers," Toronto
- SD & G Legal Clinic, "Human rights and housing," Cornwall



Unveiling the Jackman Avenue Public School's first-ever equity art installation, Interlocking Justice – Vive la justice et l'harmonie! in celebration of the school's 50<sup>th</sup> anniversary. Students in Grades 1-6 at this Toronto school created the art and chose the title. Left to right: Freddy Frenette, Vice-Principal; Astrid Jacques, Co-Chair, Jackman Avenue P.S. Equity Committee; Bipasha Choudhury, Equity Committee; Lisa Farun, Co-Chair, Equity Committee; Chief Commissioner Barbara Hall, OHRC.

### Reaching out – making electronic connections

Our ongoing challenge is to teach people across Ontario about their human rights and about emerging human rights issues. In a province as vast as ours, we are embracing technological solutions to connect with a growing number of Ontarians.

#### eLearning demand continues

Our Human Rights 101 eLearning series continues to serve as a good introduction to human rights. We updated this in the past year, and continue to see a regular stream of learners signing on. We also updated our eLearning module on human rights and rental housing.

Modules are now online in English, French, Arabic, Italian, Korean, Spanish, Vietnamese, Punjabi, Tagalog and Urdu.

#### eLearning by the numbers

In 2013-2014, thousands of people signed on to our eLearning programs. Here are some highlights of the numbers of eLearners...

Human Rights 101 (English): 16,950

Human Rights and the Duty to Accommodate: 4,901

Human Rights 101 (Spanish): 4,159

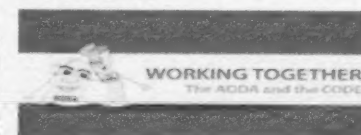
#### Adding webinars to the toolkit

In the past year, we have added webinars to our toolkit for reaching widely dispersed audiences over the Internet. We hosted sessions on:

- Competing Human Rights Webinars (in French and English)
- Removing the Canadian Experience Barrier Webinar (English)
- Duty to Accommodate Questions and Answers Webinar (English, with French coming soon)

The Duty to Accommodate webinar was the first in what will be a continuing series of "Talking about human rights" webinars, which offer extended question and answer sessions based on previously viewed webinars.

To offer even further training options, each webinar is available on the OHRC website at [www.ohrc.on.ca](http://www.ohrc.on.ca)





## Publications – offering electronic options

We continue to send printed copies of our publications across Ontario – but there is an easier way to get the information you need. All OHRC policies, reports, brochures and other printed materials can be downloaded from our website. Here are some of the top downloads in the past year:

- Your guide to your rights and responsibilities under the *Human Rights Code*: 7,702
- Policy and guidelines on disability and the duty to accommodate: 2,919
- Policy on employment-related medical information: 1,540
- Policy and guidelines on racism and racial discrimination: 1,222
- A policy primer: Guide to developing human rights policies and procedures: 1,224
- Policy on creed and the accommodation of religious observances: 1,100

## Making the social connections

Raising awareness of human rights is an important part of our work. In the past few years we have been working to build our social media networks so that we can reach out to a wider network of Ontarians. At time of writing, more than 4,300 people follow us @OntHumanRights and 2,100 “friends” on Facebook. You can also find us, and a lot of informative and accessible videos, on YouTube!



[www.facebook.com/the.ohrc](http://www.facebook.com/the.ohrc)



@OntHumanRights

### 2013-2014 FINANCIAL SUMMARY (April 1, 2013 to March 31, 2014)

	2013-2014 Printed Estimates (\$'000)	Revised Budget March 31, 2014 (\$'000)	Actual Expenditures March 31, 2014 (\$'000)	2013-2014 Year End Variance from Revised Budget (\$'000)	
				\$	%
Salaries and Wages	4,816.0	4,445.8	4,418.6	27.2	0.61%
Benefits	356.2	524.3	540.2	-15.9	-3.03%
Other Direct Operating Expenses (ODOE)	658.2	774.0	771.8	2.2	0.28%
Total Expenses	5,830.4	5,744.1	5,730.6	13.5	0.24%

### Coming soon to a computer near you!

Watch for the following eLearning modules and webinars coming soon.

- ★ Competing Human Rights eLearning (French, English)
- ★ Canadian Experience eLearning (French, English)
- ★ Revised Rental Housing eLearning (French)
- ★ Duty to Accommodate Questions and Answers Webinar (French)
- ★ Removing the Canadian Experience Barrier Webinar (French)
- ★ Preventing Discrimination because of Gender Identity and Gender Expression Webinar (French, English)
- ★ Mental Health and Addictions Webinar (French, English)
- ★ Human Rights 101 Webinar (French, English)
- ★ Teaching Human Rights in Ontario Webinar (French, English)

### This year in HISTORY

#### Bill 107 – transforming the human rights system

On June 30, 2008, Bill 107 came into force. This major reform of Ontario's human rights system included:

- changing the role of the Ontario Human Rights Commission to not have carriage of individual human rights complaints, focusing instead on working on systemic or root causes of discrimination
- having people make complaints – now called applications – directly to the Human Rights Tribunal of Ontario
- creating a new organization – the Human Rights Legal Support Centre – to provide legal advice to people making complaints.



Alfred Fung and Alicia Carr extend an OHRC welcome at the “Canadian Experience” launch.



Chief Commissioner Barbara Hall and OHRC Commissioner Larry McDermott join an early-morning flag-raising celebration at Toronto City Hall, to mark Aboriginal Day on June 21, 2013.

## This year in HISTORY

### Tranchemontagne and Werbeski v. Director of the Ontario Disability Support Program of the Ministry of Community Family and Children's Services and Social Benefits Tribunal (Supreme Court of Canada)

The *Tranchemontagne* case led to two important clarifications of the *Human Rights Code* – what is covered under the ground of disability, and the primacy of the *Code*.

Two men, who had severe alcohol addictions, applied for disability benefits under the Ontario Disability Support Program. They were denied benefits because the legislation behind ODSP said that a person is not eligible for income support as a disabled person if their only substantial impairment is alcohol or other substance dependence or addiction. But we felt that the *Code* recognized alcohol and drug addiction as a disability.

When the men raised the human rights issue at the Social Benefits Tribunal, the Tribunal refused to consider these aspects of the case, stating it was not empowered to consider human rights.

We intervened in this case at the Supreme Court of Canada, and the Court supported our position. In its April 2006 ruling, it held that the *Human Rights Code* is fundamental law. Any tribunal that has the power to consider questions of law also has the power, as a matter of ordinary statutory interpretation, to determine whether another statute is inconsistent with the *Code*. In the case of an inconsistency, the *Code* prevails unless the other statute expressly states that it overrides the *Code*. The Social Benefits Tribunal could, therefore, determine if the effective exclusion of alcoholism from disability coverage was contrary to the *Code*. If that Tribunal makes such a finding then the remedy would be to ignore that restrictive provision in the ODSPA and to grant the disability benefit.

In a later decision, the Supreme Court also found that extreme alcoholism is a disability under the *Code*.

### Affirming the meaning of accommodation in schools: *Moore v. British Columbia (Education)*.

The November 2012 Supreme Court of Canada decision in the case of Jeffrey Moore helped reinforce the need to broadly define the scope of social areas in human rights codes across Canada, and to reinforce the duty to accommodate in education.

Jeffrey had a severe learning disability. At first, the North Vancouver District School Board accommodated his needs, but when faced with funding cuts, they eliminated the program Jeffrey relied on. Jeffrey moved to a private school, where his parents had to pay for his supports.

His father complained to the B.C. Human Rights Tribunal, which found that he had been discriminated against because of his disability, by not receiving a service that was generally available to the public. The Tribunal found that there was individual discrimination and also systemic discrimination against students with severe learning disabilities.

Both the B.C. Supreme Court and the B.C. Court of Appeal overturned the Tribunal's decision, saying that to establish discrimination, Jeffrey's treatment should be compared to that of other students with disabilities. This does not reflect the human rights approach of looking for inclusion and comparisons with the entire student body, not just students who are also disadvantaged.

We intervened, along with the Alberta Human Rights Commission, when the case was appealed to the Supreme Court of Canada. We were concerned that the B.C. court decisions were basically saying that since the "special education service" Jeffrey needed didn't already exist, there was no way to accommodate him, and that since he wasn't worse off than other people with disabilities, there was no discrimination. We also argued that "special education" is an accommodation aimed at allowing students with disabilities equal access to education, in support of the human rights goals of equity, inclusion and universal design.

The Supreme Court agreed with our position, overturned the earlier rulings, and upheld the original Tribunal decision that discrimination had happened. The Court ruled that "special education" is an accommodation that is a part of providing all young people with equal participation in education. It also held that comparing one group against another is inconsistent with the type of accommodation/discrimination analysis that we think should be used when human rights issues are raised.

The decision also emphasized that "no money is no defence." In other words, when facing fiscal tightening, services and organizations still have to make accommodation the price of inclusion.